SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 357

THE MARYLAND AND VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD, et al.,

Appellants,

v.

THE CHURCH OF GOD AT SHARPSBURG, INC., et al.,

Appellees.

JURISDICTIONAL STATEMENT ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

TABLE OF CONTENTS

Item	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	4
1. *The Nature of the Denomination*	4
2. *The Two Local Churches Involved*	5
3. *The Attempted Withdrawals*	6
4. *Proceedings Below*	7
THE QUESTION IS SUBSTANTIAL	9
A. *The Departure From the Constitutional Standard*	9
B. *Recent Conflicts Among the Appellate Court Decisions*	13
CONCLUSION	16
APPENDICES	
Appendix A	A1
Appendix B	B1
Appendix C	C1
Appendix D	D1

CITATIONS

Cases:

Bouldin v. Alexander, 82 U.S. 131, 140	11
Charleston Fed. Sav. & Loan Ass'n. v. Alderson, 324 U.S. 182, 185	3
Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 289	3
Evangelical Lutheran Synod v. First Lutheran Church, 135 F.2d 701 (C.C.A. 10, 1943) *cert. den.*, 320 U.S. 757	10

Gonzalez v. Archbishop, 280 U.S. 1 ..... 11, 12

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 ..... *passim*

Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 ..... 9, 12

Lawrence v. State Tax Commission, 286 U.S. 278, 282 3

Master v. Second Parish of Portland, 124 F.2d 622 (C.C.A. 1, 1941) 11

Michigan Eldership of the Churches of God in North America v. Knight, et al., Circuit Court for Gratiot Co., Mich., Feb. 13, 1961 11

Northside Bible Church v. Goodson, 261 F. Supp. 99 (S.D. Ala., 1966), *aff'd.* 387 F.2d 534 (C.A. 5, 1967) 9, 13, 14, 15

Presbyterian Church v. Eastern Heights Presbyterian Church, 224 Ga. 61, 159 S.E.2d 690, *prob. juris. noted*, _____ U.S. _____, (No. 1380, Oct. Term, 1967) 9, 13, 14, 15, 16

Romanian Orthodox Missionary Episcopate v. Trutza, 205 F.2d 107, 112 (C.A. 6, 1953), *cert. den.*, 346 U.S. 915 15

St. John Presbytery v. Central Presbyterian Church (Fla. Sup. Ct.), 102 S.2d 714, 718 12

Serbian Orthodox Church Congregation v. Keleman, _____ Ohio _____, _____ N.E.2d _____, *pet. for cert.* pending (No. 91, Oct. Term, 1968) 13, 14

Shepard v. Barkley, 247 U.S. 1 ..... 9, 12

Sims v. Greene, 160 F.2d 512, 516 (C.A. 3, 1947) 12

Watson v. Jones, 80 U.S. 679 ..... *passim*

Winebrenner v. Colder, 43 Pa. 244 (1862) 11

Constitutional and Statutory Provisions:

First Amendment to the United States Constitution .. 2, 3, 4, 8, 9, 15

Fourteenth Amendment to the United States Constitution ... 2, 4, 12

Maryland General Religious Corporation Law, Art. 23, Secs. 256-270, Md. Code (1957) 2, 3, 4, 9, 10

28 U.S.C. 1257 (2) 3

28 U.S.C. 2101 (c) 3

Miscellaneous:

45 Am. Jur. 777-779 ..... 9, 12

Braude, Lifetime Speakers' Encyclopedia (Prentice Hall, 1962), Vol. II, p. 682 13

76 C.J.S. 850-853 ..... 9, 12

Judicial Intervention In Church Property Disputes–Some Constitutional Considerations (Note), 74 Yale L.J. 1113, 1130-31 (1965) 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

THE MARYLAND AND VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD, et al.,

Appellants,

v.

THE CHURCH OF GOD AT SHARPSBURG, INC., et al.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the Court of Appeals of Maryland entered on May 9, 1968. That judgment affirmed decrees of the Circuit Court for Washington County, Maryland, which had dismissed complaints filed in two related cases. The required notice of appeal was filed on June 4, 1968. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported in 249 Md. 650, 241 A.2d 691, and is set forth in Appendix A hereto. The unreported opinion of the trial court is attached as Appendix B hereto.

JURISDICTION

This case involves the right of a presbyterial church, through its Eldership, or governing body: to have the ecclesiastical rulings of that body enforced in a civil court; to make ministerial appointments to affiliated local churches; to continue to control those local churches through the members thereof who remain loyal to the parent church; and to retain the power to prescribe the use to which the church properties may be put in the face of attempted secessions by majorities of the memberships in two of its local churches. The interpretation given the pertinent statute, the Maryland General Religious Corporation Law,[1] by the court below holds that the corporate status of local churches, affiliated with a hierarchical church, vests in a majority of the local congregation the right to secede from the denomination, to remove control of the use of local church property from the denominational authorities, and to reject pastors appointed by those authorities, over the objections of a minority of the local congregations who remain loyal to their churches, and despite ecclesiastical decrees of the denomination's governing body holding that local churches cannot withdraw. Appellants argued first in the trial court that such an interpretation of the Maryland statute violates the free exercise of religion guaranteed by the First Amendment, now made applicable to the States by virtue of the Fourteenth Amendment of the Constitution of the United States (R. 70).[2] The appellees resisted this

[1] Art. 23, Secs. 256-270, Md. Code (1957), also printed in App. D hereto.

[2] References are to the original record filed in this Court on July 31, 1968, and are designated herein as "(R. ___)".

contention (R. 124). However, the opinion of the trial court was silent on the federal issue thus raised. In the Court of Appeals of Maryland, appellants again pressed the point in brief and argument. The Court of Appeals expressly rejected it, holding that in the absence of an express right of reversion in the parent church, provided either by deed provisions or by the bylaws or constitution of the parent church, the local churches, acting through a majority of their respective congregations, were merely "exercising their rights and powers over church property in accordance with the General Religious Corporation Law." Accordingly, it was "unable to perceive of any 'establishment of religion' or 'denial of the free exercise thereof' resulting from the Maryland General Religious Corporation Law."[3]

The jurisdiction of this Court to review the judgment below by direct appeal is conferred by 28 U.S.C. 1257 (2) and 2101 (c). Representative cases sustaining the jurisdiction of this Court to review the judgment on appeal in this case are: *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94; *Dahnke-Walker Milling Co. v. Bondurant,* 257 U.S. 282, 289; *Lawrence v. State Tax Commission,* 286 U.S. 278, 282; and see *Charleston Fed. Sav. & Loan Ass'n. v. Alderson,* 324 U.S. 182, 185.

QUESTION PRESENTED

Does the First Amendment prohibit a state statute which provides for incorporation of local churches and ownership of local church property by such a corporation from being applied so as to permit local congregations of a church, whose ecclesiastical polity or government is presbyterial in structure, (a) to withdraw from the parent denomination, (b) to retain the church properties and (c) to ignore ecclesiastical rulings of the governing body of the parent church (1) prescribing the use of church property, (2) appointing ministers to the local churches and expelling others therefrom, (3) recognizing a loyal minority of the

---

[3]App. A-28

local congregations as the true membership of the denomination with the right to worship in the local churches, and (4) denying local congregations the right to secede?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment as incorporated in the Fourteenth Amendment of the United States Constitution. Both are set forth in Appendix C hereto. Also involved is the Maryland General Religious Corporation Law, Article 23, Sections 256-270, Maryland Code (1957), pertinent provisions of which are found in Appendix D hereto.

STATEMENT OF THE CASE

The case arose out of two separate but related causes of action which were combined for hearing in the trial court and disposed of by the Court of Appeals in a single opinion. With irrelevant exceptions, the two cases turn on the same basic facts—facts which were stipulated in the trial court.

1. *The Nature of the Denomination.* The denomination known as the Churches of God was established in 1825. It is organized in three tiers. The highest body of the Church is the General Eldership, which was incorporated in 1867. Below the General Eldership are the annual elderships, such as the Maryland and Virginia Eldership, appellants in this case.[4] The General Eldership is made up of delegates selected by the annual elderships. The annual elderships meet once a year and are made up of delegates from the local churches; the General Eldership meets every third year.

The trial court found the ecclesiastical polity of the Churches of God essentially to be "presbyterial" or hier-

---

[4]Other appellants are individual members of the congregations of the two local churches who remain loyal to their affiliation with the Eldership of the Churches of God and the ministers appointed by the Eldership to the two local churches but whom the local churches refuse to accept.

archical. The Constitution of its General Eldership "makes it clear that the local churches are subject to the Annual Elderships and the Annual Elderships subject to the G.E. or to its Executive Committee, in all church matters" (App. B-10). Both the executive and judicial powers of the General Eldership are vested by the Constitution in the Executive Committee. Its judicial power extends "to all cases under the Constitution not otherwise provided for" (Exh. 1, p. 32).[5] The Constitution of the Maryland and Virginia Eldership sets forth the control of the annual elderships over the local churches, their ministers and members (App. B-10).

Unlike the Presbyterian Church, whose ministers are "called" or selected by the individual local churches, the ministers of local churches of the Churches of God are appointed by the appropriate committee of the Eldership (Exh. 7, pp. 48-49). Expelled ministers, or those whose certificates of ordination have been revoked by the General Eldership, cannot be recognized as ministers in any of the churches within the bounds of the General Eldership, and such persons "shall be denied the privileges of any of its pulpits" (Exh. 1, p. 46). Local churches are assessed and pay annual assessments for the benefit of the annual eldership and the General Eldership.

2. *The Two Local Churches Involved.* The Sharpsburg Church of God, which was organized prior to 1872, was one of the original members of the Maryland and Virginia Eldership which was organized in 1872, and remained a member of the Maryland and Virginia Eldership until its attempted withdrawal in 1966. The Sharpsburg Church of God is incorporated as a religious corporation in the State of Maryland. Land was conveyed to Sharpsburg to trustees of the church for use of the congregation in 1938. The deed of conveyance provided that in the event the congregation of the Church of God at Sharpsburg ceased to function as a church organization, then all right, title and interest in the

[5] References are to exhibits introduced by agreement in the trial court.

property was to vest in the Maryland and Virginia Eldership (App. B-3). Neither the General nor the Maryland and Virginia Elderships contributed funds for the purchase of the Sharpsburg Church property (R. 27-31).[6]

3. *The Attempted Withdrawals.* Until 1966, the relationship of the local churches at Sharpsburg and Indian Springs to the Annual Eldership and the General Eldership was in accord with the Constitutions of both elderships. All ministerial appointments to those churches were made by the appropriate committee of the Eldership; the two churches were assessed and paid annual assessments of both the Annual and General elderships; and delegates from both churches participated in the annual meetings of the Maryland and Virginia Eldership. The Maryland and Virginia Eldership assisted the Sharpsburg church through a financial contribution towards the construction of its first church building in 1878, 1879 and 1883. From time to time, the Maryland and Virginia Eldership has made contributions to the pastor at Sharpsburg, carried insurance on the church property and contributed to the repairs of that church. The Eldership also contributed to the salary of the pastor at Indian Springs, and at one time, at the request of its church council, the Indian Springs church was supervised by the Board of Missions of the Maryland and Virginia Eldership.

In the early summer of 1966, a majority of those present at congregational meetings held at Sharpsburg and at Indian Springs voted to withdraw from the Maryland and Virginia Eldership. In each case a minority of the congregation voted

---

[6]Similarly, the Indian Springs church has been affiliated with the Maryland and Virginia Eldership since 1943 and was admitted to membership in the General Eldership in 1946. It is also incorporated under Maryland law. The deed conveying the church property to Indian Springs provided that, should the church become extinct or cease to be, that property would revert to the Maryland and Virginia Eldership. There was no such reversion clause in the deed for the parsonage. Neither the General Eldership nor the Maryland and Virginia Eldership contributed any funds to the purchase of the church building at Indian Springs (App. B-5).

against withdrawal (App. B-6). Subsequently, the majorities in control at Sharpsburg and Indian Springs have refused to acknowledge the authority of the Maryland and Virginia Eldership, have refused to pay assessments levied by the Eldership, have refused to accept the pastors appointed by the Eldership, and have retained as their respective pastors two ministers who had been expelled by the Eldership.

On July 29, 1966, the Executive Committee of the General Eldership gave a judgment that all persons who had voted to withdraw from the Maryland and Virginia Eldership had abandoned and forfeited all rights, privileges and offices in the local church and in the Churches of God. The judgment of the Executive Committee also held that in each of the two local churches the members who continued to adhere and submit to the doctrines and the polity of the denomination constituted the true congregation. The Executive Committee reaffirmed the presbyterial polity of the Churches of God, which does not recognize any right of secession on the part of affiliated congregations (R. 29-30). Thereafter, the Maryland and Virginia Eldership revoked the ordination certificates of the two pastors at Sharpsburg and Indian Springs, both of whom supported the attempted secessions of their respective churches, and denied them the right and privilege of preaching in or administering any of the churches within the Eldership. The Eldership also expelled from both congregations all persons who had participated in the purported withdrawal from the Eldership.

4. *Proceedings Below.* The appellants, representing the interests of those members of the local congregations who desire to have their local churches remain affiliated with the General Eldership,[7] instituted two actions in equity to

[7]Two of the individual appellants are ministers duly appointed by the Eldership to be pastors at Sharpsburg and Indian Springs, respectively, where the defecting congregations, however, refuse to let them occupy their pulpits (App. B-3, 6). Of the appellees, two are ministers who, although expelled by the Eldership, continue to occupy the pastorates at both local churches.

prevent the attempted withdrawals, to obtain a declaratory judgment as to which of the two factions had the right to control the two churches, and to enforce the Eldership's right to designate the clergy entitled to preach in them. After the two cases were combined for hearing, the trial court dismissed both complaints. He found the polity (or government structure) of the Churches of God to be essentially "presbyterial" (App. B-10), and observed that when the two local congregations were admitted to the elderships of the Churches of God, "they agreed to accept an ecclesiastical polity, which included the placement of ministers, for this was set forth in the constitutions." (App. B-14). The trial court also found that "in all church matters", the local congregations "are subject to" the elderships (B-10). Nevertheless, he decided that because of the absence of a specific right of reverter, provided either by deed or constitutional or bylaw provisions, appellants had "failed to prove a presbytery polity existed *as to property control*", finding "that the relationship between the parent church and the local churches was congregational", so far as control of church property was concerned (App. B-14). (Italics added).

The Maryland Court of Appeals affirmed the trial court's holding. While it agreed with the trial court that "so far as the appointment of pastors is concerned and other related matters the Churches of God are generally 'presbyterial' in operation" (App. A-16), it also agreed with his conclusion that the Churches of God had a congregational polity "so far as the use and control of property of the local congregation is concerned . . ." (App. A-14). The Court of Appeals held that the "religious authority of the Eldership ceased" when the local churches withdrew (A-16). It then rejected appellants' contention that to interpret the Maryland statute to permit the withdrawals and repudiations of ecclesiastical authority sanctioned by the trial court was in effect a rejection by civil authority of the presbyterial ecclesiastical polity of the Churches of God and, therefore, a violation of the First Amendment (App. A-23, 28).

THE QUESTION IS SUBSTANTIAL

In construing the Maryland General Religious Corporation Law to permit a majority of the memberships of two local congregations to withdraw from the annual and General Eldership of the Churches of God and to control the use of the church properties, with the right to select ministers not recognized by the Eldership, the court below has ignored the prohibitions of the free exercise clause of the First Amendment as consistently applied by this Court in analogous cases. *Watson v. Jones*, 80 U.S. 679; *Shepard v. Barkley*, 247 U.S. 1; *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94; and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190. The decision of the Court of Appeals of Maryland in this case also is in conflict with the ruling in *Northside Bible Church v. Goodson*, 387 F.2d 534 (C.A. 5, 1967). Additionally, the decision conflicts with those of a compelling majority of the state courts which have passed on the issue, both prior and subsequent to the *Kedroff* decision. 45 Am. Jur. 777-779; 76 C.J.S. 850-853. Finally, the substantiality of the issue, review of which appellants ask of this Court, may be further demonstrated by the recent grant of certiorari in *Presbyterian Church v. Eastern Heights Presbyterian Church*, _____ U.S. _____, 36 U.S. L. Wk. 3469, June 11, 1968 (No. 1380, Oct. Term, 1967). In the remaining sections of their Statement, appellants briefly expand on the several reasons which support their claim that the issue presented is one which merits review by this Court.

A. *The Departure From the Constitutional Standard.* Appellants sought vindication of the right of a parent denomination, hierarchical in structure: to prescribe the use of the local churches, including control of local church property; to appoint ministers to the local churches who were recognized by the denominational authorities; to guarantee that the minority, but loyal, members of the local churches could continue to worship there as the recognized congregations; and, above all, to have the authoritative ecclesiastical rulings of its highest governing body

enforced in the civil courts. The decision of the Maryland Court of Appeals, which affirmed the trial court's dismissal of appellants' twin complaints, ignores these claims. It does so on the ground that under the pertinent state statute an incorporated local church holds legal title to church property. Therefore, it holds that in the absence of (1) a specific reversion clause in the deeds to the local church properties,[8] or (2) an express provision to the contrary in the constitution or bylaws of the parent church, or (3) a separate statute vesting property control in the hierarchical body (App. A-13),[9] a "congregational polity" exists as "to property control" and, accordingly, the religious authority of the parent church ceases upon the withdrawal of local churches, with ownership and control of the church properties passing to the dissidents, who currently form a majority of the two local congregations. The court below reached that result purely on its understanding of property rights flowing from application of the Maryland General Religious Corporation Law. It eschewed consideration of "the doctrines or discipline of the Churches of God," or analysis of the government or polity of the parent church and the ecclesiastical relationship between the contending factions.

The Maryland Court of Appeals thus has construed the State's General Religious Corporation Law to impose the so-called "formal title rule" in Maryland, *i.e.*, title to church property determines the use of that property. *Judicial Intervention In Church Property Disputes—Some Constitutional Considerations* (Note), 74 Yale L.J. 1113, 1130-31 (1965); *Evangelical Lutheran Synod v. First Lutheran Church*, 135 F.2d 701 (C.C.A. 10, 1943), *cert. den.*,

---

[8]Actually, there was a reversion clause in the deeds to both church properties involved which provided that if the local congregation ceased to exist as a church organization, such properties were to vest in the Maryland and Virginia Eldership (App. B-3, 5).

[9]Several larger denominations have secured specific statutory provisions in regard to their organization and the holding of property (App. A-7).

320 U.S. 757; *Master v. Second Parish of Portland*, 124 F.2d 622 (C.C.A. 1, 1941). This view is not without logic to support it. For example, the late Mr. Justice Jackson made a strong but unsuccessful case for the position in his dissenting opinion in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 126. However, as we read the relevant decisions of this Court, the matter has been settled otherwise. That is, in the absence of fraud, collusion or a failure to comply with the prescribed rules of organization or procedure of a church,[10] the free exercise clause requires civil courts to enforce the decisions of the final ecclesiastical tribunal of a hierarchical church, including such decisions as may prescribe the use of church property, even "in those cases where the property right flows as an incident from" such decisions. *Kedroff, supra*, at 120.

The rule had its genesis in this Court in the post-Civil War period, where Mr. Justice Miller stated it in his careful and comprehensive opinion in *Watson v. Jones*, 80 U.S. 679.[11] In that case, this Court announced as a matter of

[10]See, *e.g.*, *Bouldin v. Alexander*, 82 U.S. 131, 140, and Mr. Justice Brandeis' summary of the exceptions in his opinion in *Gonzalez v. Archbishop*, 280 U.S. 1, 16.

[11]In 1862, ten years before *Watson v. Jones*, the Supreme Court of Pennsylvania, in *Winebrenner v. Colder*, 43 Pa. 244, decided a dispute between the founder of the Churches of God in North America, John Winebrenner, and his son-in-law concerning who had the right to control and occupy the Church of God at Harrisburg. The court found for Winebrenner, holding: that the power of appointment of the ministers inhered in the Eldership; that only those members of the local church who were willing to accept the authority of the Eldership were entitled to be considered members of the Harrisburg church; and that use of the local church property was restricted to those who did not defect. 43 Pa., at 251-252, 256-257 (R. 87-94). Only one other attempted secession within the Churches of God has reached the courts. In *Michigan Eldership of the Churches of God in North America, et al. v. Knight, et al.*, an unreported case, decided by the Circuit Court of Gratiot County, Michigan on February 13, 1961 (R. 74-86), it was held that a local congregation had no right to secede, and its attempt to withdraw the church property from control of the governing bodies of the Churches of God was "void". The Michigan court did not reach the constitutional issue.

federal common law the rule that in the absence of an express trust in the deed under which a religious group holds title to church property, civil courts are bound by the relevant rulings of the authoritative governing body of the church regarding its use. Mr. Justice Miller distinguished between congregational and hierarchical churches, holding that in the former situation a court is bound to enforce the decision of a majority of the church members and in the latter is bound to enforce a decision of the highest tribunal of the hierarchical church. In *Watson v. Jones* the Court found the Presbyterian Church to be hierarchical and awarded the use of local church property to an anti-slavery faction which had supported a decree of the Presbyterian General Assembly that local churches should exclude from their membership those who supported slavery.

Prior to *Kedroff* the doctrine enunciated in *Watson*, although not of clear constitutional status, was consistently applied in the federal courts. *Gonzalez v. Archbishop*, 280 U.S. 1; *Shepard v. Barkley*, 247 U.S. 1; *Sims v. Greene*, 160 F.2d 512, 516 (C.A. 3, 1947). During this earlier period, as well as in more recent times, the principles of *Watson v. Jones* were also approved in the great majority of states whose courts were called upon to decide issues arising from intra-church disputes and secessions. See the cases collected in *St. John Presbytery v. Central Presbyterian Church* (Fla. Sup. Ct.), 102 S.2d 714, 718; 45 Am. Jur. 777-779; and 76 C.J.S. 850-853. Finally, in *Kedroff* and again in *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, the pre-*Erie Railroad v. Tompkins* ruling of *Watson v. Jones* was given unquestioned constitutional dimension and, by virtue of the Fourteenth Amendment, made applicable to the States

The instant appeal presents an appropriate occasion for this Court to reaffirm the principle of *Watson v. Jones*, as subsequently embellished by the constitutional status to which it was elevated in *Kedroff*. Unlike other recent lawsuits in the area, the case arrives here unencumbered by a record reflecting either the intense acrimonies of an ecclesiastical dispute over the social policies of a parent

church, or charges and counter-charges concerning the schismatic tendencies of defecting local congregations.[12] It presents, unadorned and precisely, the question of whether a state's concern that the title to the property of an incorporated local church be fixed in those who form the majority of that corporation suffices to permit an exception to the general rule that the right to prescribe the use to which church property can be put, including designation of who may preach and worship there, determines who shall have the right to control it, whatever the technicalities of legal title. The court below, to paraphrase slightly Henry Ward Beecher, apparently was of the view that "religion belongs to the place of business [*i.e.*, incorporation] as well as to the church."[13] *Appellants believe that the free* exercise clause requires that the latter be preferred when a civil court must choose between them.

B. *Recent Conflicts Among the Appellate Court Decisions.* The social turbulence, national and international, of our time is also manifesting itself in the ecclesiastical realm. Of a current rash of bitter intra-denominational disputes, some have given rise to litigation presenting not only issues of ownership and use of church property, but also those of apostasy, heresy, and the right to occupy bishoprics and ministries.[14] Unsurprisingly, courts called upon to adjudicate these relatively unfamiliar controversies have failed to agree among themselves concerning the standard to be applied in deciding them.

---

[12]Compare: *Northside Bible Church v. Goodson*, 261 F. Supp. 99 (S.D. Ala., 1966), *aff'd.*, 387 F.2d 534 (C.A. 5, 1967); *Presbyterian Church v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690, *prob. juris. noted*, _____ U.S. _____; and *Serbian Orthodox Church Congregation v. Keleman*, _____ Ohio _____, _____N.E.2d _____, *pet. for cert.* pending in this Court as No. 91, October Term, 1968. The decision of the Supreme Court of Ohio in this case had not yet been reported when this Jurisdictional Statement was printed.

[13]Braude, Lifetime Speakers' Encyclopedia (Prentice Hall, 1962), Vol. II, p. 682.

[14]See fn. 12, *supra.*

On the one hand, there is the Fifth Circuit's recent decision in *Northside Bible Church v. Goodson*, 387 F.2d 534 (C.A. 5, 1967), affirming 261 F. Supp. 99 (S.D. Ala., 1966). The lower court had struck down an Alabama statute which would have authorized a majority of a local congregation to withdraw local church property from the use and control of the parent organization when it is alleged and established that the parent church had changed its social policies. The case involved an attempted secession by majorities in local congregations of the Methodist Church. Like the Churches of God in North America, the Methodist Church adheres to a system in which "ministers are assigned to churches by the officials of the parent body rather than by act of the local congregation" 261 F.Supp., at 102. The Fifth Circuit, invoking *Watson v. Jones*, 80 U.S. 679, and *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, found the Alabama statute unconstitutional on First Amendment grounds, noting that it impaired the itinerant ministry feature of the Methodist Church. 387 F.2d, at 538.

Conversely, the Supreme Court of Georgia in *Presbyterian Church v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690, a short time ago upheld the right of local churches to withdraw from a general church and to retain possession and use of local church properties upon the court's finding that the parent church had substantially abandoned its original tenets by adopting certain social and public policies which the local churches found offensive and, apparently, heretical. This Court noted jurisdiction in the *Presbyterian Church* case on June 10, 1968, _____ U.S. _____ (No. 1380, Oct. Term, 1967). Also pending in this Court as No. 91, Oct. Term, 1968, is a petition for certiorari filed late last term in *Serbian Orthodox Church Congregation v. Keleman*. In that case, the Ohio courts were called upon to decide a dispute in the Serbian Orthodox Church concerning the validity of a bishopric, the propriety of dividing dioceses, and the right to own and use church property.[15]

[15]The controversy in the Serbian Orthodox Church apparently has reached the trial courts of at least six states and Canada. See Appendix

Appellants believe that the First Circuit's decision in the *Northside Bible Church* was correct and the decision of the Supreme Court of Georgia in the *Presbyterian Church* case was in error. Appellants have no firm view regarding the merits of the *Serbian Orthodox Church* case, where the record seems unclear and the result mixed, the Ohio courts apparently having awarded the bishopric to one faction and administrative power over the dioceses of the Serbian Church to another. However, even assuming that the *Presbyterian Church* case was decided correctly on the ground that there may be circumstances establishing that a parent church has so completely repudiated the fundamental tenets of the faith as to constitute a breach of trust entitling local congregations to go their separate ways and take local church properties with them,[16] such a holding should not control disposition of this appeal. No evidence was either offered or received in the trial court to show justification for the attempted secessions by the two local churches. Beyond that, the cases discussed in this section of appellants' statement suggest that the principles laid down in *Watson* and *Kedroff* are being put to a difficult test at the present time. Hopefully, those principles will survive the pressures now testing their continued validity. Appellants respectfully suggest that the instant case, where the ecclesiastical disagreements out of which it may have arisen have not infiltrated the record, furnishes an opportunity for the Court to make it clear that the *Kedroff* doctrine has meaning beyond the special facts of that case and that the First Amendment imposes on the States the principles which Justice Miller laid down in *Watson v. Jones.* That is, in the absence of fraud, procedural unfairness or irregularity, or the total repudiation by a parent church of the tenets on which it was founded, final decisions of the governing body of a hierarchical church are to be enforced in the civil courts,

---

B printed with the petition for certiorari filed in No. 91, October Term, 1968.

[16]See, *e.g., Romanian Orthodox Missionary Episcopate v. Trutza,* 205 F.2d 107, 112 (C.A. 6, 1953), *cert. den.,* 346 U.S. 915.

and the fact that the right to use and control church properties may rise or fall with such decrees does not remove them from the protection of the First Amendment.

CONCLUSION

For the reasons stated herein, this Court has jurisdiction of the appeal and the question presented is substantial. Accordingly, appellants respectfully suggest that probable jurisdiction should be noted and the appeal set down for briefing and oral argument at the same time that the Court hears argument in *Presbyterian Church v. Eastern Heights Presbyterian Church, supra.*

Respectfully submitted,

JAMES H. BOOSER

100 Pine Street
Harrisburg, Pennsylvania 17108

ALFRED L. SCANLAN

9806 Singleton Drive
Bethesda, Maryland 20034

MARTIN J. FLYNN

734 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Appellants.

SHEA & GARDNER

734 Fifteenth Street, N.W.
Washington, D.C. 20005

McNEES, WALLACE & NURICK

100 Pine Street
Harrisburg, Pennsylvania 17108

Of Counsel

July 31, 1968

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

No. 87

September Term, 1967

THE MARYLAND AND VIRGINIA
ELDERSHIP OF THE
CHURCHES OF GOD, et al.

v.

THE CHURCH OF GOD
AT SHARPSBURG, INC., et al.

Hammond, C. J.
Marbury
Barnes
Finan
Singley,

JJ.

Opinion by Barnes, J.

Filed: May 9, 1968

The appeal in this interesting case was taken from an April 4, 1967, decree of the Circuit Court for Washington County (McLaughlin, C.J.) in two companion cases dismissing the bills of complaint filed by the appellant, The Maryland and

Virginia Eldership of the Churches of God (Md. & Va. Eldership), a Maryland corporation and others against the appellees, The Church of God at Sharpsburg, Inc. (Sharpsburg), a Maryland corporation and its called Pastor, and against the Indian Springs Church of God (Indian Springs), also a Maryland corporation and its acting Pastor, seeking to prevent Sharpsburg and Indian Springs from withdrawing from the Md. & Va. Eldership and to determine which of two factions involved in each suit should control the respective churches, their property and corporations. The other appellants in the Sharpsburg suit are several members of the Sharpsburg congregation and its appointed Pastor; in the Indian Springs suit the other appellants are two members of the congregation of that church. In addition to dismissing the bill of complaint, the Chancellor dissolved the temporary injunctions previously issued in the respective cases.

The facts, with certain reservations as to relevancy, are not disputed and are incorporated in an agreed stipulation filed in the suit.

The General Eldership of the Churches of God in North America (General Eldership) is a religious denomination organized in 1845 by John Winebrenner. It was incorporated on April 18, 1867, by an Act of the General Assembly of Pennsylvania. The Md. & Va. Eldership is one of the Elderships which make up the General Eldership, and was formed in 1872. It was originally incorporated in 1878 in Carroll County, Maryland and is presently incorporated by Articles of Incorporation recorded in Washington County on September 4, 1928.

Sharpsburg was organized sometime prior to 1872 and was one of the original members of the Md. & Va. Eldership. It continued as such a member until it withdrew in 1966. It was incorporated on May 20, 1881, and again on December 2, 1939. Harry S. Churchey, one of the appellees, was issued a Christian Worker's Certificate on October 13, 1922, an annual license on October 17, 1957, an annual Ordination Certificate on October 17, 1959, and on October 13, 1960, he was

issued a Life Ordination Certificate authorizing him to serve as a Minister of God. He was never appointed by the Md. & Va. Eldership to be the pastor at Sharpsburg, his last appointment being as pastor at Chestnut Grove and Knoxville on October 4, 1965. He was, however, "called" by Sharpsburg in June, 1966, and began his ministry there on July 17, 1966. Bennett G. Murray, one of the appellants and a plaintiff below, was appointed by the Md. & Va. Eldership to serve as pastor at Sharpsburg, but that church refuses to let him occupy the pulpit. Sharpsburg was conveyed land on September 29, 1938 by a deed to the Trustees of the church for use of the congregation. A clause in this deed provides "in the event the congregation of the Church of God at Sharpsburg ceases as a church organization, then all right, title and interest in the hereinabove described property shall immediately vest * * *" in the Md. & Va. Eldership, "a body corporate, its successors or assigns." The Sharpsburg church property is valued at $20,000 and was subject to a mortgage dated November 13, 1956, from the Trustees and the Md. & Va. Eldership. Neither the General Eldership nor the Md. & Va. Eldership contributed any funds for the purchase of this property which has not been repaid to them. At a duly called meeting of the congregation of Sharpsburg on June 26, 1966, a majority of those present voted to withdraw from the Md. & Va. Eldership. The vote was properly recorded. The appellants deny the effectiveness or propriety of this action.

Indian Springs was originally incorporated on March 30, 1929, under the name "The Indian Springs Union Church and Sunday School Association of Washington County." The Articles of Incorporation were recorded in Washington County and were amended on March 1, 1962, to change the name of the corporation to its present name "Indian Springs Church of God." Indian Springs was either a member of or was affiliated with the Md. & Va. Eldership from 1943 to 1966, having been formally admitted to membership in 1946. Mervil Stambaugh, one of the appellees and a defendant below, received his Christian Worker Certificate from the Md. & Va. Eldership in 1963, his annual license in 1964, and his

annual certificate in 1965. He was appointed pastor at Indian Springs by the Md. & Va. Eldership in 1964 and was reappointed, at the request of that church, in 1965. Indian Springs owns two parcels of land: (1) the church building conveyed to the Trustees of the church on April 8, 1953, by a deed which provides in part that if the church should become extinct or cease to be, the property should be the property of the Md. & Va. Eldership; this property is valued at $30,000 and is subject to a mortgage of approximately $4,000, and (2) the parsonage property conveyed to the Trustees on April 14, 1962, by a deed containing no reversion clause whatever; the parsonage property is valued at $14,000. Neither the General Eldership nor the Md. & Va. Eldership contributed any funds for the purchase of these properties. A majority of the congregation at Indian Springs and its pastor Stambaugh on July 10, 1965, voted to withdraw from the Md. & Va. Eldership. The meeting was properly called and the vote was properly recorded. The appellants deny the effectiveness or propriety of this action.

On July 29, 1966, the executive committee of the Administrative Council of the General Eldership gave a "judgment" that all persons who voted to withdraw from the Md. & Va. Eldership have:

> * * * abandoned and forfeited all rights, privileges, properties and offices in the local church and in the Churches of God * * *. In each local church the members who continue to adhere and submit to the doctrines and the policy of the denomination constitute the true congregation. The Executive Committee, as the duly constituted supreme court of the Churches of God, so determine, reaffirming that the presbyterial polity of the Churches of God recognizes no right of secession on the part of congregations affiliated with the denomination * * *."

The appellees deny the effectiveness of this action.

On July 30, 1966, the Md. & Va. Eldership revoked the annual ordination certificate issued to Harry S. Churchey, expelled him from the Md. & Va. Eldership, and denied him

the right and privilege of preaching in and administering any of the churches and property of the Eldership. The Eldership also expelled from it all persons who participated in the withdrawal of a congregation from the Eldership. On the same day it took the same action against Mervil Stambaugh. Since that date the church councils of Sharpsburg and of Indian Springs have refused to recognize any authority of the Md. & Va. Eldership over the respective churches. Sharpsburg has continued to employ Harry S. Churchey as pastor and has refused to accept Bennett Murray as pastor; Indian Springs has continued to employ Mervil Stambaugh as pastor and has refused to accept Bennett Murray as pastor.

After their admission and until 1965, both Sharpsburg and Indian Springs accepted appointments as pastors of persons appointed by the appropriate committee of the Md. & Va. Eldership, sent delegates to the annual sessions of the Md. & Va. Eldership and paid assessments made against the local churches for the General Eldership and the Md. & Va. Eldership. The appellees deny the relevancy of these facts.

Copies of the Articles of Incorporation of the General Eldership, the Md. & Va. Eldership, Sharpsburg and Indian Springs are part of the stipulation of facts and specific references to these documents will be made later in this opinion. There are also copies of other documents, books and other data to which reference will be later made.

Two questions are presented to us for decision:

1. Under the applicable statutes of the State of Maryland, the provisions of the Constitutions of the Md. & Va. Eldership and the General Eldership, the corporate charters of Sharpsburg and Indian Springs and the deeds of property to the trustees of the local corporations, may a majority of the congregation withdraw from the denomination and retain control of the property of the local church and the church corporation?

2. Did the decision of the Chancellor violate the First and Fourteenth Amendments to the Constitution of the United States?

We are of the opinion that the first question must be answered in the affirmative, the second in the negative and that the decrees of the Chancellor should be affirmed.

I.

The principal issue in the present case involves the question of whether the property of the two local churches is controlled by trustees of the local churches representing the majority of the congregation of those local churches. The two local churches were incorporated under the General Religious Corporation Law of this State, now Code (1957), Article 23, Sections 256 to 270. The present General Religious Corporation Law is based upon and largely follows the original legislation on this subject, i.e., the Act of 1802, chapter 111. The present law provides in effect that in *every* church, religious society or corporation of whatever sect or denomination "protected in the free and full exercise of its religion by the Constitution and laws" of the State there shall be power and authority in all persons above 21 years of age belonging to "any such church, society or congregation" to elect certain persons, not less than four nor more than twenty-five, who when elected "shall be constituted a body politic or corporate to act as trustees in the name of the particular church, society or congregation for which they are respectively chosen, and *manage the estate, property, interest and inheritance of the same.*" (Emphasis supplied.) By the provisions of Section 257, the trustees are given perpetual succession by their name of incorporation and very broad powers in regard to the corporate property. The trustees may purchase and hold the property and "use or lease, mortgage or sell and convey the same in such manner as they may judge most conducive to the interest of their respective churches, societies or congregations," with a provision that they shall not sell, mortgage or dispose of property held by the corporation under an instrument prohibiting such sale. There are provisions for election of trustees, how their succession is maintained, with a provision that the minister or senior minister shall be a member of the corporation, *ex*

officio, as well as provisions for the arbitration of contested elections, provisions for the adoption of a plan, agreement or regulation at the first election of trustees, its acknowledgement and entry in a book required to be kept, the recording of the plan, agreement or regulation with the Department of Assessment and Taxation and the procedure for amendment.

Several denominations have specific provisions in Article 23 in regard to their organization and the holding of property. The Roman Catholic Church has provisions in Sections 271 to 274 for the incorporation of its parishes, the ordinary (the Archbishop), the vicar-general and the pastor of the congregation together with those persons appointed by the ordinary, are designated as incorporators. Sections 275 to 297 relate to the Protestant Episcopal Church in the Diocese of Maryland and are basically the provisions of the original Vestry Act, i.e., Act of 1798, chapter 24.[1] Sections 298 to 312 contain the provisions of a new act relating to the Protestant Episcopal Church in the Diocese of Easton (consisting of the nine Eastern Shore counties of Maryland), but this Act is not applicable in the Diocese of Maryland. Section 313 relates to the formation of corporations of the Methodist Church and Section 314 provides for the formation of corporations of the Presbyterian Church in the United States.

It is clear that when a congregation is incorporated under the General Religious Law applicable to *all* religious groups, the trustees and the local congregation own and control *the property* of the local church. There is no provision in the General Religious Law that the local congregation conform to or follow any particular religious tenet or doctrine and it is apparent that it would be inappropriate for the General Assembly to have made such a provision. In short, the

---

[1] Separate congregations may, however, be incorporated under the General Religious Law and become affiliated with the Protestant Episcopal Church even though they have not been originally incorporated under the Vestry Act itself. See "Parishes of the Diocese of Maryland," (1960), by the Reverend Doctor Nelson Waite Rightmyer.

General Religious Law is concerned with the ownership, use and disposition *of property*, not with any religious theories, doctrines or tenets. So far as the Maryland statutory law is concerned, there seems little doubt that the trustees and congregations of the local churches are entitled to own, use and control the property of the respective corporations.

The charters of the respective local churches plainly confer the ownership, use, management and sale of the property of the local churches on the corporations and their trustees, subject to the provisions of the local by-laws. The stated purposes of the corporations are to "form a church organization or congregation to bring to the people of the community a vital knowledge of Jesus Christ as Lord and Savior and to promulgate the Gospel of the New Testament Scriptures" (Sharpsburg) and "to provide its members (of the corporation) with the preaching of the Word of God, the administration of the ordinances, the facilities for public worship and the exercise of Christian discipline and to adopt and prosecute from time to time new measures as are in harmony with the spirit and teaching of the Word of God as shall tend to promote the Kingdom of God in this World" (Indian Springs). "The business and property of the Corporation shall be conducted and managed by a Board of not less than five * * * Trustees * * *" (Sharpsburg) and "the Trustees shall, in conformity to the law, control all property belonging to said congregation" (Indian Springs). In Section Third, subsection (e) of the Sharpsburg Charter appears the following:

> "The Corporation shall have all the General Powers conferred by Chapter 334 of the Laws of the General Assembly of Maryland, Acts of 1924, or any amendments thereto, and the enumeration of specific powers in this Certificate of Incorporation are in furtherance of and not in limitation of the General Powers conferred by law."

In Section 3 of the Charter of Indian Springs, it is provided:

> "*The congregation of this Church shall be and remain an independent congregation and may own*

and dispose of property, both real and personal, as said congregation in accordance with its By-Laws and ordinances shall deem proper. This congregation and church may from time to time as may be deemed fit associate itself with such church denomination as it may deem desirable *but such association shall in no wise effect this Corporation in its ownership and control of its real and personal property, which shall be and remain in the properly constituted officers of this Corporation.*" (Emphasis supplied.)

In neither charter is the Md. & Va. Eldership or the General Eldership mentioned.

The question then arises in regard to whether the trustees and the local congregation have lost the rights confirmed by the General Religious Law and their respective corporate charters for the ownership, use and control of the property of the local churches because of their withdrawal from the Md. & Va. Eldership after a regular vote of the majority of the respective congregations.[2] In considering this rather narrow question, it will be helpful to review the law in regard to the jurisdiction of courts in the United States in religious disputes and the exercise of such jurisdiction.

Our predecessors have held, in accordance with the law generally in this Country, that in regard to matters involving spiritual affairs the Maryland courts have no power to inter-

---

[2]The testimony and documents do not indicate the *size* of the majorities. In the Chancellor's opinion it is indicated in Note 1 to his opinion that there were 34 members of the congregation at the Sharpsburg meeting, 32 of whom voted to withdraw, one voted against and one vote was discarded. In Note 2 of the Chancellor's opinion it was indicated that at the Indian Springs meeting there were 25 members, 18 of whom voted for withdrawal and seven against. As there is no support for these figures in the testimony and documents we will not consider them, in view of the stipulation that a majority of the members of each congregation voted at a regularly called and conducted congregational meeting to withdraw from the Md. & Va. Eldership.

fere. Such matters "must be left with the authorities of the church or denomination who have the power, by custom and usages of the ecclesiastical organization, to consider and determine upon them." *Shaeffer v. Klee*, 100 Md. 264, 271, 59 A. 850, 852 (1905). In short the courts, wisely we think, will not enter a "theological thicket." The Supreme Court of the United States in the case of *Watson v. Jones*, 80 U.S. (13 Wall) 679, 20 L.E. 669 (1872) declined to follow the English cases and especially *The Attorney General, ex rel. Mander v. Pearson*, 3 Mer. 353, 36 Eng. Rep. 135 (Ch. 1817), which held in an opinion by Lord Chancellor Elton that there was an *implied trust* on the part of those who gave the property to the local church that the trust *res* would be used for the promulgation of the faith and doctrines in effect when the property was given, even though there was no express provision to that effect in making the gift. Mr. Justice Miller, for a majority of the Supreme Court, pointed out that the English precedents were not persuasive in that England had an Established Church and the English cases were related to that concept, largely repudiated in the United States.

When *rights of property* are involved, however, the courts, of necessity, must proceed to consider and adjudicate those rights not only to solve the particular case and the rights of the litigants before them, but also to preserve definiteness and order in the holding of property by religious corporations. Mr. Justice Miller in *Watson* recognized this and indicated three general classifications in regard to property held by religious bodies as follows:

> "The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

"1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

"2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization." (80 U.S. (13 Wall.) at 722-23).

The third classification appears to be modified by a subsequent decision of the Supreme Court of the United States which indicates that there must be an element of fairness in the decisions of the church tribunals. See *Gonzalez v. Archbishop*, 280 U.S. 1, 50 S.Ct. 5, 74 L.E. 131 (1929), in which Mr. Justice Brandeis, for the Supreme Court, stated:

"In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." (280 U.S. at 16).

And see *Master v. Second Parish of Portland*, 36 F.Supp. 918 (D. Me. 1941), aff'd. 124 F.2d 622 (1st Cir. 1941). See also the helpful notes entitled *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 Yale L.J. 1113, 1119-1121 (1965); and *Judicial Intervention*

in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142 (1962).

In considering questions in regard to the use of church property it is usually important, in the absence of express language in the deed conveying the property or making the gift, to consider the "polity" or form of church government which the particular denomination has. In the note in 75 Harv. L.Rev., at pages 1143-4, the three general types of church polity are defined as follows:

> "At least three kinds of internal structure, or 'polity,' may be discerned; congregational, presbyterial, and episcopal. In the congregational form, each local congregation is self-governing. The presbyterial polities are representative, authority being exercised by laymen and ministers organized in an ascending succession of judicatories—presbytery over the session of the local church, synod over presbytery, and general assembly over all. In the episcopal form power reposes in clerical superiors, such as bishops. Roughly, presbyterial and episcopal polities may be considered hierarchical, as opposed to congregational polities, in which the autonomy of the local congregation is the central principle." (Footnotes omitted.)

In many of the hierarchical churches there may be provisions in their Constitutions, Canon Law or other controlling documents or statutes which make it clear that the property is held in trust for the uses of the parent church and its discipline and appointments. See, for example, Article 23, Section 313 (e) in regard to the holding of property in the Methodist Church. There may be a requirement that the local church include provisions in the deeds to its property that it is held in trust for the parent church in conformity to its worship, doctrine and discipline and, upon a departure therefrom, the property will revert to the hierarchical body. Even in the absence of such an express provision in the deeds to the local church property, there may be an implied consent by the local church that the local property is so held if the constitution, by-laws, canon law or statute pro-

vide to that effect. It thus appears that there are three methods by which a hierarchical denomination may maintain control of local church property:

1. It may require reverter clauses in the deeds to the property of the local churches.

2. It may provide in its constitution or by some other authoritative source for the reverting of the local church property to the hierarchical body upon withdrawal by a local congregation with an implied consent by the local church to this provision.

3. It may obtain from the General Assembly an act providing for such a result.

As we will later consider, the Church of God did not use any of these three possible means to obtain control of local church property.

A denomination need not adhere strictly to any one of the three polities mentioned—episcopal, presbyterial or congregational. It may avail itself of parts of one, two or even all three. An example of the last possibility is the Protestant Episcopal Church in the Diocese of Maryland, which has a bishop as part of an episcopal polity, but is governed on a diocesan level by the bishop and the convention consisting of the clergy and certain elected laymen (a characteristic of presbyterian polity), but, under the provisions of the original Vestry Act and in the present Maryland statutes in regard to that church, the control of parish or local church property is in the hands of the Vestry or trustees for the local church or parish. See Article 23, Section 304. The power to call a priest as rector for the local church or parish is also given to the Vestry subject to certain conditions with the right to contract with the priest in regard to salary, duration of the employment and other matters. It is thus seen that merely because a denomination has some of the characteristics of one type of polity, some of the characteristics of other polities are not excluded. This is the situation in regard to the Church of God.

"As the Church of God does not have bishops, it obviously does not follow an episcopal polity. It does, however, have some and perhaps more of the characteristics of the presbyterial polity in that there is a governing body beyond that of the local congregation consisting of elders, the ordained ministerial elders (teaching elders) and the elected lay persons (ruling elders) and a general eldership over all of the intermediate elderships. This does not, however, exclude the use of a congregational polity so far as the use and control of property of the local congregation is concerned, and an examination of the Constitutions and other documents of the Md. & Va. Eldership and of the General Eldership indicate that this is the case.

In the Constitution of the General Eldership there is no statement in regard to the ownership or control of church property. Apparently any such provision was deliberately omitted since there was attached to the Constitution of the General Eldership a statement under the heading of "Important Information" in which two resolutions are quoted as follows:

> "1. Resolved, That this General Eldership *recommends* to all the brethren in the Churches of God to have their Bethels or meeting-houses parsonages, etc., deeded to the elders or trustees of their respective *local churches,* and their successors in office, to be held by them in trust for the *church.*
>
> "2. Resolved, That we also *advise* tham to have inserted in the deed a provisionary clause, providing that in case the Church *becomes extinct or ceases to maintain an organization* in harmony with the doctrines and polity of the Churches of God in North America, the property shall revert to the annual Eldership of which the church is a part." (Emphasis supplied.)

It will be observed that these resolutions are not part of the Constitution of the General Eldership and, in any event, are *advisory* only. The Md. & Va. Eldership did not accept this

"advice," but, on the contrary, in its Constitution in Article XVII–"Deeds" provides as follows:

> "Local church property, whether personal or real, shall be deeded to *the trustees of local churches and their successors in office,* with this proviso: That should the church *become extinct, or cease to be,* the property shall be the property of the Maryland and Virginia Eldership, a body corporate, to be disposed of at its pleasure." (Emphasis supplied).

Nor do the deeds for the properties of the local churches provide for their reverting to the Md. & Va. Eldership if the congregation withdraws from that Eldership. The deed to the Sharpsburg church recites in the habendum clause that it is held by the trustees and their successors "in trust for the use of the congregation of the Church of God at Sharpsburg, Maryland," and–

> "* * * in the event the congregation of the Church of God at Sharpsburg, Maryland, *ceases to function as a church organization,* then all right, title and interest in the hereinabove described property shall immediately vest in the Maryland and Virginia Eldership of the Churches of God in North America, a body corporate, its successors or assigns." (Emphasis supplied.)

One of the Indian Springs deeds has a provision that if the church should *become extinct or cease to be* the property reverts to the Md. & Va. Eldership; the other Indian Springs deed (for the parsonage) contains no reverter clause whatever. It is abundantly clear from these facts that the Md. & Va. Eldership did not even recommend a reverter clause if there was a departure from doctrine or a withdrawal from the Eldership, but did recommend such a reverter if the local church became extinct or ceased to be, a quite different situation from the withdrawal and continued active existence of the local church. There is, therefore, no applicable provision for reverter or forfeiture of the property of the local church to the Md. & Va. Eldership in the event of withdrawal by the local church from the Eldership. The control of the

local church property by the local church, its trustees and corporation given by its charter, its deeds and the Maryland General Religious Corporation law continues.

S. G. Yahn, D.D., the editor of The Church Advocate and well versed in the polity of the Church of God, published a book entitled, "Polity of the Churches of God in North America" in 1929. After setting out the three general forms of church government already mentioned—Episcopal, Presbyterial and Congregational—Dr. Yahn indicates that the church government of the Churches of God "is not strictly speaking analogous to that of the Presbyterian denomination," and points out the differences between the two systems of government of those two denominations. He also contrasts the government of the Churches of God with the government of the Methodist Church, but points out that the Churches of God have no bishops. In conclusion on this aspect of the matter he stated:

> "From this brief glance it will be seen that our church polity is a *combination of principles and provisions to be found in different religious bodies,* but not in any one of them in exactly the same combination. It is the product of a *selective process designed to meet our needs as a religious body.* And that it has served this purpose satisfactorily is a tribute to those who formed our first ecclesiastical organization." (Emphasis supplied.)

So far as the appointment of pastors is concerned and other related matters, the Churches of God are generally "presbyterial" in operation as Dr. Yahn states and as the Constitutions of the General Eldership and Md. & Va. Eldership show, but when the local congregations withdrew from the Md. & Va. Eldership this religious authority of the Eldership ceased and, thereafter, neither the Md. & Va. Eldership nor the courts could impose this religious principle upon those congregations. The only question then for the courts to determine is who controls the local church property and, as we have seen, the Constitution of the Md. & Va. Eldership does not purport to change or interfere with the

control of the local church when a schism arises and the local church withdraws. We need not inquire into why the Md. & Va. Eldership did not do this,[3] we only need to determine that it did not. Indeed, there are those who are of the opinion that schism is a good and necessary thing for the natural and proper growth of the church. See Zollman, *American Church Law* (1933) where it is stated in §262 (pages 250-51):

> "Schisms are as old as the church itself, continuously occur, and are analogous to the process of breaking and reforming by which a glacier makes its slow way to its destination. They are as necessary to the growth of the church as the fissures on the outer bark of trees produced by the expansion of the living tissue below. While viewed by many as a curse, while dissensions over questions of doctrine have been called a greater misfortune to a church than the destruction of its first meeting house by fire and that of its second by a tornado, they are in fact a blessing in disguise. They are an indication of life and a hopeful rather than a distressing sign. They are the process by which the living church continually adapts itself to the living society upon which it operates. With all the wastage incident to them, with all the heartache and headache which they cause, they are necessary to the natural growth of the church in the fulfillment of its proper mission." (Footnotes omitted.)

---

[3]It may be, of course, that inasmuch as the Church of God was established in 1825 by a schism lead by John Winebrenner there is a certain delicacy on the part of the Elderships in dealing too harshly with the departing brothers. Then too, in view of the Scriptural Commands in the New Testament to "love your enemies" (Lk. 6:27), to "offer the other cheek" (Lk. 6:29) and "bless them which persecute you" (Rom. 12:14), it might well be thought wiser and more consistent with the New Testament teaching to permit the withdrawing brethren to depart in peace, especially as the Kingdom of the Founder of the Faith "is not of this world" (John 18:36). There is, however, nothing in the record to indicate the reasons for not providing for the reverter of local church property in the event of withdrawal from the Eldership.

If a denomination with an episcopal or presbyterial polity does not adhere to Zollman's view it may, as we have seen, easily prevent the withdrawing congregation from taking with it the local church property if it takes the action we have suggested. In the absence of such action, the local corporation, which under the law of Maryland and the deeds to the local property controls that property, continues this control. There is no financial loss to the Elderships as it was stipulated that neither of the Elderships had "contributed any funds to church property which have not been repaid to them."

Our decision in *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 338, 176 A.2d 772 (1962), although not entirely in point with the present case, is persuasive. In that case it was pointed out that St. Martin's Evangelical Lutheran Church of Annapolis was established in April, 1874, as the German Evangelical Lutheran Church. After its then charter expired, it continued to function as an unincorporated religious society affiliated with the German Evangelical Synod of North America. After the consolidation of that Synod with the Reformed Church to form the Evangelical and Reformed Church, St. Martin's continued its affiliation with that group. In 1949 St. Martin's was incorporated under the Maryland General Religious Law—and adopted a charter and by-laws. Its by-laws provided that:

> "This congregation is, and shall be, a member of the Evangelical and Reformed Church or its successors. Withdrawal from the Church can take place only if two-thirds of the voting numbers of the congregation present at a meeting called for this purpose shall favor such withdrawal." (227 Md. at 342.)

The Evangelical and Reformed Church and the Congregational Christian Churches decided to form the United Church of Christ. The constitution and by-laws of the new denomination provided for the right of the local church to adopt its own charter and by-laws and to control its own

property. By a vote of 173 to 34 the congregation of St. Martin's decided to sever its relationship with the Evangelical and Reformed Church to avoid the consolidation with the Congregational Christian Church and to apply for affiliation with the United Lutheran Church. In the by-laws of the Evangelical and Reformed Church, added in 1934 prior to the incorporation of St. Martin's, it was provided that if a congregation withdrew from the church the property should revert to the judicatory immediately above, but this provision did not apply to congregations who at that time did not provide for such reversion, so that the reverter provision did not apply to St. Martin's. These by-laws also provided that the "property of the congregation * * * shall be under the care of the trustees * * * who shall hold the property as a sacred trust for the congregation." The Synod had recognized the minority as the actual church congregation at St. Martin's. The 34 minority members of St. Martin's congregation filed a suit to obtain a declaratory judgment that it was entitled to the church property and to direct the affairs of the church corporation. As in the present case, the minority of the congregation argued that the polity of the Evangelical and Reformed Church is presbyterial in character rather than congregational; that the parent body's rules control; and, that the relationship between the congregation and the parent church is contractual and hence the by-laws of the parent body control when inconsistent with those of the local congregation. The lower court ruled in favor of the majority and the decree setting forth this ruling was affirmed on appeal. Chief Judge Brune, for the Court, stated at 227 Md. 346-47:

> "In short, we find no conflict between the charter and by-laws of the Evangelical and Reformed Church and those of St. Martin's which provide for the withdrawal of the latter body from the former.
>
> "Appellants' second main argument is equally without merit and is, in fact, sufficiently met by what we have already said. It is quite a leap from the by-law provision, that the property of a local congregation is to be held 'in a sacred trust for the congregation' to the view that the minority, therefore,

has the right to the property. It seems clear that the 'congregation' means all the persons entitled to vote at the meetings of the Church. And, as has been stipulated here, there was no infirmity in the notices given for the meeting of March, 1960 and the right to vote thereat. The congregation duly elected trustees pursuant to Art. 23, § 256, Code (1957); and under § 257 the corporation owns all the property and the corporation is managed by the trustees elected by the congregation. The very terms of the by-laws of the Evangelical and Reformed Church to the effect that the property is to be held in a sacred trust for the congregation, rather than for worship in accordance with some particular set of doctrines, or in accordance with the Evangelical and Reformed Church's, or its successors', doctrines, seems conclusive of the issue. The fact is, that, as is demonstrated by the discussion of Art. 16 of Part II of the by-laws of the Evangelical and Reformed Church, St. Martin's was in a congregational, rather than a presbyterial, relationship with that body. When the congregation met in accordance with its validly adopted by-law and the majority voted to withdraw, it instructed the trustees that they were no longer a part of the Evangelical and Reformed Church. The trustees control the church corporation which controls the property. Code (1957), Art. 23 § 257. In the absence of evidence to show that any restriction in the deeds to St. Martin's properties prevents such action on the part of the trustees, there can be no valid attack upon the action taken by the congregation. And, as has been seen, even assuming *arguendo* a 'contractual' relation between the parent church and the local church in which the parent church is supreme, the by-laws of the Evangelical and Reformed Church do not prohibit the action taken here."

The Court did not find it necessary to consider the ruling of the Chancellor that since St. Martin's was validly incorporated under Code (1957), Art. 23 §§ 256-270, the provision of its charter and by-laws were superior to those of the Evangelical and Reformed Church, relying on *District Grand Lodge No. 5 v. Jedidjah Lodge No. 7*, 65 Md. 236, 3

A. 104 (1886), and *Goodman v. Jedidjah Lodge No. 7*, 67 Md. 117, 9 A. 13, 13 A. 627 (1887).

The decision in the *St. Martin's* case establishes that even though a denomination may generally have a presbyterial polity, its relationship with a local congregation in regard to the property of that congregation may be on the basis of a congregational polity, and, further, if the by-laws of the parent body are not inconsistent with the provisions of the charter and by-laws of the local congregation providing for the control by the local congregation over its property, a minority of the congregation, although reorganized as the "congregation" by the parent body, is not entitled to the property of the local congregation and to control the local corporation.

This is basically the situation in the present case and we will apply the principles enunciated in the *St. Martin's* case to the case at bar. As in that case, we do not find it necessary to consider the argument of the appellees that because of incorporation of Sharpsburg and Indian Springs under the General Religious Law, their character and by-laws would, in any event, be superior to those of the Md. & Va. Eldership.

The appellants rely heavily upon the case of *Winebrenner v. Colder*, 43 Pa. 244 (1862), which involved a dispute between John Winebrenner, the founder of the churches of God, and his son-in-law James Colder over the right to control and occupy the Church of God in Harrisburg, Pennsylvania. In that case, the majority of the congregation desired to employ James Colder as pastor even though he had been expelled from the East Pennsylvania Eldership and was no longer recognized as a member of the Churches of God. The minority of the congregation decided to receive the person appointed by the East Pennsylvania Eldership as the pastor of the Harrisburg Church. The trial court decided that the appointee of the East Pennsylvania Eldership was the only person authorized to serve as pastor and enjoined James Colder and his followers from interfering with the minority group. This ruling was affirmed by the

Supreme Court of Pennsylvania. There are several differences between the *Winebrenner* case and the case at bar. In the first place, there was no *question of the property* of the local congregation involved. Secondly, the *local congregation had not voted to leave the parent body*, but a majority of the congregation nevertheless refused to accept the pastor lawfully appointed by the parent body. Thirdly, as is pointed out in the opinion in *Winebrenner*, "The state having prescribed no law for the action of any church, leaves each church or denomination to the guidance of its own law," (43 Pa. at 251) but, as we have seen, Maryland provides for incorporation of local congregations under the General Religious Law and if the control of the local church property by the local trustees is not modified by contract—express or implied—or otherwise, the provisions of the local charters and by-laws govern the ownership and control of the local church property and corporation.

The appellants also cite an unreported opinion of the Circuit Court for the County of Gratiot, Michigan entitled *Michigan Eldership of the Churches of God in North America, et al v. Knight, et al*, involving a dispute over the local church property of the New Haven Center Church of God, when the majority of the congregation voted to withdraw from the Michigan Eldership. In that case, there was evidence that in the constitution adopted by the local congregation in 1953 there was a provision that the local church declared that it was "fully in accord with the Michigan Eldership and the General Eldership in accepting the Word of God as our guide for church membership and government," and further that "members shall not teach contrary to the teachings of the Church of God in North America." There was no reference in the Circuit Court's opinion to any provision of the Michigan Corporation Law. In our opinion, the factual situation was different in the Michigan case from that presented in the present case and apparently there was no applicable Michigan Corporation Law analogous to the Maryland Corporation Law applicable in the case at bar. We do not find the decision of the Michigan Circuit Court persuasive.

The appellants earnestly contend that the decrees of the lower court violate the First and Fourteenth Amendments to the Constitution of the United States as an "establishment of religion" or a "denial of the free exercise" of religion. We do not agree.

Assuming, arguendo, that the provision of the First Amendment that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" is applicable to the State of Maryland by the provision of the Fourteenth Amendment, it is clear to us that the provisions of Maryland's General Religious Corporation Law and the decrees of the lower court neither "establish religion" nor "prohibit the free exercise thereof." The first General Religious Corporation Law was enacted by the General Assembly by Chapter 111 of the Laws of 1802. It was re-enacted in substantially the same form by Chapter 471 of the Laws of 1868. The original Act of 1802 is not substantially different from the present provisions of the Code but in the original Act there was a provision which stated:

> "Nothing therein contained shall be construed, adjudged or taken to abridge or affect the rights of conscience or private judgment, or in the least to alter or change the religious constitution or government of any church, congregation or society, so far as respects or in any way concerns doctrine, discipline or worship." See *Tart v. Gibbs,* 24 Md. 323 (1866).

This provision clearly indicates that the provisions of the Act of 1802, applicable to any and all religious corporations, was not intended in any way to interfere with or "establish" the doctrines or discipline of any religious body. What was intended was to provide for the formation of religious corporations for local congregations which would hold, control and have power to dispose of *the property* of the religious corporations. The Act of 1802 and its successor acts in no way sought to establish any ecclesiastical polity. This was left to the corporations themselves. By the nature of the law in regard to the formation of corporations generally, the

religious corporation formed under it is controlled by trustees elected by the local membership. This is true of all member corporations. This does not mean that the religious corporation thus formed may not be contract—express or implied—adopt a presbyterial or episcopal polity and, if this is done, may provide for the holding of the local church property subject to the provisions of the constitution, charter or by-laws of a denomination and the action of the authoritative agencies of such a denomination. This, however, is accomplished by the will and action of the local corporation and is in no way imposed by the State through its General Religious Corporation Law. It is true that the General Assembly at the request or by aquiescence of the denomination involved has code provisions in regard to the government of the Protestant Episcopal Church, the Presbyterian Church in the United States and the Roman Catholic Church, but these provisions are not involved in the present case.

The appellants argue that, in effect, the General Religious Law has permitted Sharpsburg and Indian Springs to change the polity of the Md. & Va. Eldership from a presbyterial polity to a congregational polity and thus "establishes" a congregational polity or denies the "freedom of religion" of the Md. & Va. Eldership to govern the Churches of God under their jurisdiction by a presbyterial polity. As we see it, this argument begs the question as it assumes that the polity of the Md. & Va. Eldership, so far as the property of the local churches is concerned, is presbyterial, whereas, as we have indicated, that polity in regard to the property of the local church, is congregational. Indeed, if the General Religious Law of the State sought to impose a presbyterial polity upon the religious corporations formed under it, there would be grave danger of a possible "establishment of religion" or a denial of the "free exercise thereof." It is purely a coincidence that the ownership and control of property by the religious corporation formed under the General Religious Law is, prima facie, consistent with the government and polity of the Baptist and Congregational Churches and of the Jewish Synagogues. As we have indi-

cated, no hierarchical denomination is required to have a congregational polity for the property of its local churches. If it chooses to have such a polity, this is entirely its own decision.

It is clear to us that only the ownership and control of property is involved in the present case, and not the doctrines or discipline of the Churches of God. Indeed, the record does not even disclose what is the nature of the doctrinal dispute between Sharpsburg and the majority of its congregation, and Indian Springs, and the majority of its congregation, on the one hand, and the Md. & Va. Eldership, on the other. We cannot tell from the record who are the alleged heretics and who are the alleged orthodox. It is well that this does not appear, as the Civil Courts are properly wary of considering these matters. As the Chancellor aptly stated in his opinion:

> "Nowhere in the pleadings, the oral arguments or the Briefs does the court find any explanations as to what prompted the withdrawals. It is to be presumed that none of the parties feel it necessary to involve the court in abstruse theological doctrines to reach a decision of the issues."

The appellants rely in support of their position upon the decisions of the Supreme Court of the United States in *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 73 S. Ct. 143, 97 L.E. 120 (1952) and *Kreshik v. St. Nicholas Cathedral,* 363 U.S. 190, 80 S.Ct. 1037, 4 L.E.2d 1146 (1960). In our opinion, these cases are clearly distinguishable from the present case. In *Kedroff* a statute of the State of New York was involved which was passed by the Legislature of New York in 1945 to transfer control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church (the Patriarch of Moscow and the Holy Synod) to the governing authorities of the Russian Church in America, a church organization limited to the diocese of North America and the Aleutian Islands. The Russian Orthodox Church had always had an episcopal polity. This was not involved in the statute which,

however, sought to transfer control of the New York churches from one governing body to another. The majority of the Supreme Court was of the opinion that this statute violated the Fourteenth Amendment as prohibiting the free exercise of religion. Later, after remand of the case, the New York courts found that the hierarchical authorities of the Russian Church were dominated by the Soviet Government and an appointee of such authorities could not validly occupy St. Nicholas Cathedral. These findings were reversed by the Supreme Court in *Kreshik*, holding, in effect, that the New York courts could not do what the New York Legislature was held not to be able to do in *Kedroff*. Both *Kedroff* and *Kreshik* involved the right to appoint the church ministry and an attempt to transfer by state law the power of appointment from one group of church authority to another group. There is no action of the State of Maryland, either legislative or judicial, which sought to effectuate such a transfer in the present case. The General Religious Law applies equally to all religious corporations formed under it without regard to doctrine, discipline or other ecclesiastical matters. The action taken by Sharpsburg and Indian Springs was by a majority of the respective congregations exercising their rights and powers over the church property in accordance with the General Religious Corporation Law. The severing of the religious ties with the Md. & Va. Eldership was entirely their action in which the State of Maryland played no part, and which is not involved in this case.

It is apparent to us from the authorities that equity courts have jurisdiction over a church *property* dispute and that neither the First Amendment nor the Fourteenth Amendment prohibit this, even if peripheral doctrinal or disciplinary matters may be incidently involved. Either the majority or the minority must be held to control the local church property and the equity court must make the decision so that the property rights are lawfully established by judicial process rather than by possible self-help. As was aptly stated in 17 Yale L.J. 1113, *supra* at page 112.

> "The Court could also have been saying in *Kedroff* that the New York Legislature had no power to

determine the ownership of religious property because the first amendment bars the state from taking any part in religious disputes. Under this theory any decision in this area involves, to some extent, both an establishment of the religion of the winner and an interference with the free exercise of the loser. This reading would account for the first amendment language in *Kedroff*. The reference to *Shelly v. Kraemer* in *Kreshik* could then be taken to mean that involvement in religious disputes is forbidden to courts, as well as to legislatures. If followed to its logical conclusion, however, this argument would bar any court, including the Supreme Court, from deciding the case. * * *

"Further, a constitutional doctrine prohibiting courts from settling religious property disputes would have serious practical consequences. The state has a legitimate interest in keeping title and ownership in land settled and secure. This 'housekeeping' interest requires that the state know at all times the owners of property within its borders, so that injured persons may find responsible owners, and so that property may be freely alienable. The state also has an interest in affording to disputants some recourse other than the sword for settling their arguments, and the state alone has the authority to make and enforce judgments between such disputants. If only from a practical point of view, then, the first amendment should not be an absolute bar to a court's taking jurisdiction of a church property dispute." (Footnotes omitted.)

In the same article it is suggested as follows:

"Basically, the state can choose either of two main avenues of approach to these church property problems; it can set up more or less arbitrary rules of its own, declaring where, for the state's limited purposes, control will be said to lie, or it can look to the individual church's property rules and accommodate state law to these rules." (17 Yale L.J. at 1130.)

Under either of the suggested "avenues of approach" Sharpsburg and Indian Springs prevail in the present case. If the Maryland General Religious Corporation Law is considered to incorporate the arbitrary rules declaring where control of the local church property is, then these statutes clearly place title and control of the property in the local church corporation. If, on the other hand, the equity court will look to the denomination's property rules, here again the local churches prevail since the Constitution of the Md. & Va. Eldership provides that local church property should only revert if the local church becomes extinct. There is no prohibition on withdrawal of a local church and a provision for a reverter of the local church property if this occurs.

The appellants also rely on *Goodson v. Northside Bible Church*, 261 F. Supp. 99 (S.D. Ala. 1966), in which the District Court for the Southern District of Alabama declared unconstitutional an Alabama statute known as the "Dumas Act," which authorized a 65% majority of the adult members of a local church to sever unilaterally its relationship with the parent church. The Court held that this statute interferred with the presbyterial system of the Methodist Church in regard to ministerial appointments, and was an attempt by the Alabama Legislature to change "established systems of church ownership without regard to the ecclesiastical law of the denomination." There is no such attempt in the Maryland General Religious Corporation Law as each religious corporation is entirely free to affiliate with any denomination it pleases and becomes bound by its system of church ownership. In the present case, as we have indicated, there is no polity of the Md. & Va. Eldership in regard to the ownership and control of local church property which is contravened by the Maryland General Religious Law.

We are unable to perceive of any "establishment of religion" or "denial of the free exercise thereof" resulting from the Maryland General Religious Corporation Law or from the decrees of the lower court.

DECREES AFFIRMED, THE COSTS TO BE PAID BY THE APPELLANTS.

APPENDIX B

IN THE CIRCUIT COURT FOR
WASHINGTON COUNTY

NO. 24,890 EQUITY

THE MARYLAND AND VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD, A BODY CORPORATE, et al.,

Plaintiff

v.

THE CHURCH OF GOD AT SHARPSBURG, INC., A BODY CORPORATE, et al.,

Defendant

NO. 24,900 EQUITY

THE MARYLAND AND VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD, A BODY CORPORATE, et al.,

Plaintiff

v.

INDIAN SPRINGS CHURCH OF GOD, et al.,

Defendant

THE PROCEEDINGS

There are two cases. In No. 24,890, the Maryland and Virginia Eldership of the Churches of God, a Body Corporate, is Complainant, together with several members of the Church of God at Sharpsburg, Inc. and Rev. Bennett G. Murray, appointed Pastor. The Respondents are the Church of God of Sharpsburg and Wesley Churchey, the called Pastor. No.

24,900 Equity has the same corporate complainant, together with two members of the Indian Springs Church of God. The Respondents are the Indian Springs Church of God and Mervil Stambaugh, Acting Pastor. The Bills of Complaint ask for various forms of relief, but boiled down to a jelled substance, they seek: (1) to prevent an attempted withdrawal by the Respondents from the Complainant Corporate organization, and (2) a decision as to which of the two factions involved in each case shall control the Church, their property and the Church Corporations.

The Bills of Complaint and Answers are lengthy and there is no need to repeat their contents in this Opinion. Let it suffice in this case to state that the written pleadings, the oral arguments and the Briefs, all able and thorough, demonstrate a strong and determined advocacy of the correctness of the respective positions of the parties. The Opinion will give answer to both cases.

THE FACTS

The facts have been stipulated and only a brief resume thereof is necessary.

(A) Facts applicable to both Churches:

The General Eldership of the Churches of God in North America is a religious denomination organized in 1845 by John Winebrenner and incorporated April 18, 1867 by an Act of General Assembly of Pennsylvania (General Eldership –for brevity G.E.).

The Maryland and Virginia Eldership of the Churches of God in North America was formed in 1872 and incorporated in 1878 in Carroll County, Maryland. It is presently incorporated in Articles recorded in Washington County on September 4, 1928. This Eldership is one of the Elderships which make up the General Eldership of Churches of God in North America (Maryland and Virginia Eldership–for brevity M. & V.E.).

(B) Facts as to Sharpsburg Church:

(1) The Sharpsburg Church of God was organized sometime prior to 1872; incorporated under the name "The Church of God at Sharpsburg, Inc.," on May 20, 1881. Later incorporated December 2, 1939 under the same name. (The Sharpsburg Church of God, Inc.–Sharpsburg).

(2) Sharpsburg was one of the Charter Members of M. & V.E. starting from 1872 and continuous since that time.

(3) Harry S. Churchey was issued a Christian Worker's Certificate on October 13, 1922; an annual license on October 17, 1957; an annual Ordination Certificate on October 17, 1959; and a Life Ordination Certificate on October 13, 1960, authorizing him to serve as a Minister of God.

(4) Churchey was never appointed by M. & V.E. to be pastor at Sharpsburg; his last appointment was to be pastor at Chestnut Grove and Knoxville on October 4, 1965. He was "called" by Sharpsburg in June, 1966 and began ministry on July 17, 1966.

(5) One of Complainants, Bennett G. Murray, was appointed by M. & V. E. to serve as pastor, but Sharpsburg refuses to let him occupy the pulpit.

(6) Sharpsburg was conveyed land on September 29, 1938, to Trustees of Church for use of congregation. Clause in part in Deed states: "in the event the congregation of the Church of God at Sharpsburg ceases as a church organization, then all right, title and interest–shall immediately vest in M. & V.E., its successors or assigns."

(7) This church property was subject to a mortgage dated November 13, 1956 from Trustees and M. & V.E. Neither G.E. or M. & V.E. contributed any funds to church property, which have not been repaid to them. Church valued at $20,000.00.

(8) On June 26, 1966, majority of congregation, after a meeting properly called voted to withdraw from M.

& V.E. Complainants deny the effectiveness or propriety of this action.[1]

(9) The G.E. on July 29, 1966 gave a judgment that all persons voting to withdraw from M. & V.E. "have abandoned and forfeited all rights, privileges, properties and offices in the local church * * *". Respondents deny effectiveness of this judgment.

(10) On July 30, 1966, M. & V.E. revoked certificate issued to Churchey and expelled all members who participated in the withdrawal of a congregation from the Eldership.

(11) Since July 30, 1966, Sharpsburg has refused to recognize any authority of M. & V.E. over the church; has employed Churchey as its pastor and refused to accept Murray as pastor.

(12) From the time assessments were made against local churches by M. & V.E. for its use and use of G.E., Sharpsburg has paid. Payments first recorded in 1886. Respondents deny relevancy of this fact.

(13) From 1872 to 1965, pastors of Sharpsburg were appointed by M. & V.E. Respondents deny relevancy.

(14) From 1872 to 1965 Sharpsburg has sent delegates to annual sessions of M. & V.E. Respondents deny relevancy.

(15) In 1879, 1889, 1895, 1927, 1938, 1951, and 1961, annual meetings of M. & V.E. were held in Sharpsburg Church. Respondents deny relevancy.

(16) The Constitution, Charter and By-Laws of G.E. contain no express reference either permitting or prohibiting withdrawal of a local church from the Eldership, nor is there any express reference to disposition of local church property in event of withdrawal. Same facts apply to M. & V.E. except proviso in Article XVII. (This proviso states that in

---

[1] There were thirty-four members of the congregation—thirty-two for withdrawal; one against and one vote discarded.

all deeds there should be a provision that if the church becomes extinct, or cease to be, the property shall be the property of M. & V.E.)

(C) Facts as to Indian Springs Church:

(1) Incorporated as "The Indian Springs Union Church and Sunday School Association of Washington County, Maryland, on March 30, 1929. Articles amended March 1, 1962 and name changed to Indian Springs Church of God.

(2) Member of or affiliated with M. & V.E. from 1943 to 1966. Formally admitted to membership in 1946.

(3) Mervil Stambaugh received Christian Worker Certificate from M. & V.E. in 1963, annual license in 1964, annual certificate in 1965.

(4) Appointed pastor at Indian Springs by M. & V.E. in 1964 and re-appointed in 1965 at request of Indian Springs.

(5) Indian Springs owns two parcels of realty. The church building was conveyed on April 8, 1953. Deed provides that should church become extinct or cease to be, property shall revert to M. & V.E. The parsonage property was conveyed on April 14, 1962. The value of church property is $30,000.00 subject to a mortgage of $4,000.00. The parsonage is valued at $14,000.00. There is no reversion clause in parsonage deed. M. & V.E. did not contribute any funds for the purchase of these properties.

(6) On July 10, 1965, Indian Springs and Stambaugh, as pastor, voted to withdraw from M. & V.E. Meeting properly called. Complainant denies effectiveness of this action.[2]

(7) Same as No. 9 under (B) Facts as to Sharpsburg.

(8) Same as No. 10 under (B) Facts as to Sharpsburg.

---

[2]There were twenty-five members of the congregation—eighteen for withdrawal and seven against.

(9) Same as No. 11 under (B) Facts as to Sharpsburg.

(10) From 1943 to 1965 Indian Springs was assessed by M. & V.E. for benefit of M. & V.E. and G.E. and each year assessment paid. Respondents deny relevancy.

(11) From 1944 to 1965 the pastor of Indian Springs was appointed by M. & V.E. Respondents deny relevancy.

(12) From 1947 to 1965 Indian Springs sent delegates to annual sessions of M. & V.E. Respondents deny relevancy.

(13) Same as No. 16 under (B) Facts as to Sharpsburg.

ISSUE TO BE DECIDED

The paramount question to be decided is who has the right to use or right to prescribe the use of the Sharpsburg and Indian Springs Church properties.

OPINION

The jurisdiction of a Court of Equity is not challenged by the Respondents. The case of Brown v. Scott, 138 Md. 237, applied the law as stated in 34 Cye 1167 which is: "Another ground for equitable relief is the failure of two factions of a church to agree on the proper use of the church property. In such cases equity will take jurisdiction and protect the party entitled to possession regardless of whether it constitutes a majority or minority." M.L.E. Religious Societies S7, 32 L.R.A. 92; Jenkins v. Shiloh, 189 Md. 512.

Schisms in churches are not uncommon and are currently on the increase. These disputes will, in the end touch upon questions of right to use or prescribe use of church property. Zollman (American Church Law p. 262) says schisms are necessary to the growth of the church, are as old as the church itself, and are an indication of life and a hopeful rather than distressing sign. However, courts have always been wary of becoming embroiled in church property disputes.

In July 1966, after properly called meetings of the congregations, both church respondents by a majority, voted to

withdraw from the Maryland and Virginia Eldership of the Church of God and sever their relationship with it. Thereafter both churches appointed their own ministers and have refused to acknowledge the authority of M. & V.E. Nowhere in the pleadings, the oral arguments or the Briefs does the court find any explanations as to what prompted the withdrawals. It is to be presumed that none of the parties feel it necessary to involve the court in abstruse theological doctrines to reach a decision of the issues.

Brief History of Church Law

The genesis of church law began in 1817 with an opinion by Lord Eldon in the English case of Attorney General v. Pearson, 36 Eng. Rep. 135. The English doctrine, as originally announced by Lord Eldon, held that church property was the subject of an implied trust in favor of those who adhered to the faith of the founders of the church. In the United States, the implied trust doctrine was followed in Southern, Western and Middle Atlantic States, and held in essence that the church property was impressed with a trust for the maintenance of the forms of ecclesiastical government set up by the founders. The New England States leaned toward a doctrine of congressional autonomy, which held that the congregation was the basic church entity, no matter what form of Church government the Mother Church espoused. (75 Harv. Law Review, 1142, 1149-154 and cases cited).

Then came the famous case of Watson v. Jones, 80 U.S. (13 Wall) 679 (1871). The Supreme Court rejected the English doctrine and set forth a new set of three rules to cover all church disputes. The first rule recognized the trust theory only where the trust deed prescribed some specific form of religious doctrine, or belief to be followed. The second and third rules to be applied in the absence of specific trust provisions, encompassed the forms of ownership of property in congregational and hierarchical churches. In a church which is as to property matters, "governed solely within itself" the court would enforce the decision of the

majority; in churches where the religious congregation holding the property is but a subordinate member of some general church, the civil court would defer to the decisions of the highest authority of the general church. (Yale Law Journal, Vol. 74, May 1965 No. 6 Judicial Intervention in Church Property Disputes).

The Watson case, where the schism was between pro and anti-slavery members of the congregation, decided that the anti-slavery group alone had been recognized by the General Assembly, the highest church authority, and therefore had the right to the church property.

Justice Miller, writer of the Watson opinion, saw a fundamental distinction between the government consented to by the members of congregational churches and that consented to by members of hierarchical churches. In a congregational church each local congregation is self-governing; in a hierarchical church the religious congregation is but a subordinate member of some general church organization, or where the whole body speaks through the highest church authority. The Justice dismissed as irrelevant the fact that title to the property was in a board of trustees—they were not significant in the scheme of church government, but simply held the land for the use and benefit of the congregation.

But many courts have been unwilling to recognize the unlimited plenary power of Watson. They demand from church tribunals an adherence to fairness. Thus in Boulders v. Alexander, 82 U.S. (15 Wall) 131, (1872), the Supreme Court said: "In a congregational church, the majority; *if they adhere to the organization and doctrines,* represent the church."

The later case of Gonzales v. Archbishop, 280 U.S. 1 (1929) diluted the absolute deference to church authorities principles of Watson. It held that: "In absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular

courts as conclusive, because the parties in interest made them so by contract or otherwise."

Recent decisions have demonstrated a particular care to identify in each case the location of the right to use and prescribe use of the property in dispute. (Yale Law Journal Vol. 74, Page 1122 and cases cited).

Polity of The Churches of God

Is the polity of the Churches of God Presbyterial or Congregational? S. G. Yahn, D.D., in his book filed as an Exhibit says: "it hardly seems proper to continue to speak of ours as a presbyterial form of government. * * * Neither do we have the congregational form of government." The Court certainly has no quarrel with this opinion of a noted Church of God authority. It is the conclusion of Dr. Yahn, "that our church polity is a combination of principles and provisions to be found in different religious bodies, but not in any one of them in exactly the same combination. It is the product of a selected process designed to meet our needs as a religious body."

The Complainants argue strongly that the polity is presbyterial or hierarchical and not congregational or self-governing. The presbyterial polities are representative, authority being exercised by laymen and ministers organized in an ascending succession of judicatories—presbytery over the local church, synod over the presbytery and general assembly over all. The Churches of God have only two ecclesiastical bodies above the local church—the Annual Eldership and the General Eldership.

If the "living relationship test" is applied, as suggested in the note in 75 Harvard Law Review, and one looks to the lines of church authority before the dispute impaired them, the polity of the Churches of God is at least partially presbyterial. Both Sharpsburg and Indian Springs: (1) accepted ministers appointed by the Annual Eldership; (2) sent delegates to Eldership conventions; (3) received (although small) financial assistance from the general church; (4) made contributions to funds of the general church.

But a review of the Constitutions of the G.E. and M. & V.E. of the Churches of God presents the strongest argument that the ecclesiastical polity is presbyterial. The G.E. constitution makes it clear that the local churches are subject to the Annual Elderships and the Annual Elderships subject to the G.E. or its Executive Committee in all church matters. The Constitution of the M. & V.E. sets forth the control of annual elderships over the local churches; their ministers and members. It would unduly prolong an already prolix opinion to outline all the various provisions of the Constitutions setting forth these generalities. (Yahn, Polity of Churches of God in N.A.; Michigan Eldership v. Knight, C.C. for Gratiot County, Michigan, Winebrenner v. Colder, 45 Pa. 244).

However, the Court repeats that it would be presumptious to dispute the opinion of such a noted Churches of God of North America authority as Dr. Yahn, and will agree that they have mixed presbyterial and congregational characteristics. (Yahn, Polity, etc. Page 49). The problem here is to decide whether the *control of the church properties* is presbyterial or congregational.

Documentary Evidence of Parent Church and Local Churches

(1) There are no provisions in the Constitutions or By-Laws of the G.E. or the M. & V.E. directing how local church property is to be held, except as set forth in Number (3) hereafter.

(2) The Constitutions and By-Laws of G.E. and M. & V.E. are silent as to permitting or prohibiting the withdrawal of local churches from the Elderships.

(3) The M. & V.E. by Article 17 provides: "that church property, real or personal shall be deeded to the trustees of local churches with a proviso that should the church become extinct, or cease to be, the property shall be the property of the M. & V.E. to be disposed of at its pleasure."

(4) (a) A resolution of the General Eldership *recommends:* "to all the brethren in the Churches of God to have

their meeting houses, parsonages, etc., deeded to the elders or trustees of their respective local churches, * * * to be held by them in trust for the church."

(b) That we also *advise* them to have inserted in the deed a provisionary clause, providing that in case the Church *becomes extinct* or *ceases to maintain an organization in harmony with the doctrines and polity of the Churches of God in North America, the property shall revert to the Annual Eldership of which the church is a part.*

(5) None of the deeds to the churches herein involved, contain any provisions that their properties are to be held in trust for worship in accordance with the doctrines of the Churches of God of North America.

(6) The Deed to the Sharpsburg property grants the same to four named trustees and their successors in trust to have and to hold the property in trust for the use of the congregation of the Church of God at Sharpsburg, with a proviso if the church ceases to function as a church organization, the property shall then vest in the M. & V.E.

(7) The Deed to the Indian Springs Church property shows a conveyance unto five trustees of the First Church of God of Indian Springs and their successors, with a proviso that should the church become extinct or cease to be, the property shall be the property of M. & V.E.

(8) The Deed to the Indian Springs Parsonage is a conveyance from the County Commissioners of Washington County unto the Indian Springs Church of God, a Maryland Corporation. There is no trust provision or reversionary clause in this Deed.[4]

Dr. Yahn, in his work at Pages 54 and 55 published in 1929 says: "In some cases the Eldership holds title to local church properties in trust for the respective churches, especially where local churches are not incorporated. In other cases the property is held by local trustees, *with* the *customary reversion clause in the deed* to the effect that in case the church should become extinct, or cease to maintain

an organization in harmony with the doctrines, customs and polity of the Church of God in North America, it shall become the property of the Eldership."

It is significant that the *resolution* of the G.E. is listed in a heading entitled "Important Information". Then follows suggestions to persons who desire to give to the church, under "Bequests", "Precautions In Making a Will", "Forms of Bequest" and "Resolutions Respecting the Deeding of Church Property". The resolution is nothing more than a *suggestion* to the brethren as to how the deeds should be written and is in no way a directive or a part of the church law.

It is plain that although Dr. Yahn speaks of customary reverter clauses, containing provisions that when churches "cease to be," or "cease to follow church doctrine", the *General Eldership* has never seen fit to make such clauses a mandatory part of church polity.

The M. & V.E. constitution provides for reverter in cases where churches become *extinct* or *cease to be*, but this is a far cry from a reverter for failure to ascribe to church doctrine. It is apparent that with the passage of many, many years and the history and experience of hundreds of church schisms in all denominations, the Churches of God of North America, had it so desired, could have nailed down a presbyterial polity of church ownership.

Courts of equity in applying a yardstick of fairness, should be very careful to identify in each case the location of the right to prescribe use of the property in question. It is reasonably clear here that the presbyterial forms of polity, demonstrated by the three series of assemblies, and the power to appoint ministers in the Eldership, does not necessarily import a hierarchy. The individual churches consented to be governed in practice and doctrines, but this consent was not unconditional as to the use of the church property. There was no express condition of loss of property in case of withdrawal. If the theory of implied trust is applied it is certainly overcome by the law of waiver or

estoppel. The Churches of God of North America "preached" a theory of general church control but never exercised it. The failure to set up provisions of parent church control in cases of withdrawal; the lack of insistence in church deeds that the property be held by trustees in trust for the observance of church doctrines; the acceptance of local churches in the Elderships whose deeds provided for reverter in cases only where churches "become extinct" or "cease to be"; the consent to the deed to the Indian Springs Parsonage which has no reverter clause; the passing of a resolution recommending but not *making mandatory* a provision for reverter in deeds where churches cease to be or fail to follow church doctrines, when combined, show acquiesence in a congregational polity of control of church properties. Nor if we assume there was a contractual relationship between the parent church and the local churches which made the parent church dominant, there is nothing in the constitution or by-laws of the C.E. or M. & V.E. to prevent a withdrawal.

The case of Hayman v. St. Martins, 227 Md. 338, held that it was not necessary on the facts to decide the broad questions of the "implied trust doctrine", estoppel and doctrines relating to the distinction between the presbyterial and congregational forms of church government. The Court said that the provisions of the by-laws of the parent church and the local church and the provisions of Article 23, Sections 256-270 of Maryland Code were sufficient to dispose of the case. However, the Court stated: "The congregation duly elected trustees pursuant to Article 23, Section 256, and under Section 257 the corporation owns all the property and the corporation is managed by the trustees elected by the congregation. The very terms of the by-laws of the Evangelical and Reformed Church to the effect that the property is to be held in a sacred trust for the congregation, *rather than for worship in accordance with some particular set of doctrines * * * seems conclusive of the issue. * * ** The trustees control the church corporation which controls the property. Code Article 23, Section 257. In the absence of

evidence to show that any restriction in the deeds to St. Martin's properties prevents such action on the part of the trustees, there can be no valid attack upon the action taken by the corporation."

This Court construes the Hayman decision as deciding squarely that under Maryland Corporation Law, the trustees own and control the church properties; and further, that although Hayman was based on by-law provisions, plus sections of the Maryland Code, reading the case as a whole, it infers that without by-law, constitutional or deed restrictions, the Court will not go into the complexities of implied trust doctrines and issues relating to presbyterial and congregational relationships.

The Court is cognizant that Yahn, Zollman (American Church Law), the Watson case and many other cases and text writers hold that when a factual contest for the possession of property arises in a local church, the law will award the property to that part of the church loyal to the parent church doctrines, no matter how small the minority. These views are bottomed on a premise of established presbyterial polity.

When the Sharpsburg and Indian Springs Congregations were admitted to the elderships of the Churches of God of North America, they agreed to accept an *ecclesiastical polity*, which included the placement of pastors, for this was set forth in the constitutions. But the Court finds there is no documentary or other evidence that they agreed to a penalty of forfeiture of property in the event of disaffiliation. Under the circumstances here, to hold the mere act of joining the Elderships and the acceptance of church doctrines gave tacit acquiesence to the relinquishment of property rights would be harsh and inequitable.

It is the opinion of the Court that the Complainants have failed to prove a presbyterial polity existed as to property control and that the relationship between the parent church and the local churches was congregational. The law is clear

that under such a relationship property rights follow the majority of the congregation.

It is pertinent that other religious denominations have found it necessary to go to the Maryland Legislature to secure assured parent control of church property. This gives strength to the thought that in Maryland presbyterial polity will not be taken for granted and there must be concrete evidence by document or otherwise that such a relationship was intended.

The Bills of Complaint will be dismissed upon presentation of proper orders; the Complainents to pay the court costs.

D. K. McLaughlin,
Chief Judge

Dated: March 28, 1967

APPENDIX C

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides in pertinent part that: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; . . ."

The Fourteenth Amendment provides in pertinent part: ". . . nor shall any State deprive any person of life, liberty or property, without due process of law; . . ."

APPENDIX D

PERTINENT PROVISIONS OF THE MARYLAND GENERAL RELIGIOUS CORPORATION LAW:

§ 256. Number of trustees; trustees constitute body politic.

In every church, religious society or congregation, of whatever sect, order or denomination, or which shall at any time hereafter be known and acknowledged in the State, and protected in the free and full exercise of its religion by the Constitution and the laws thereof, there shall be sufficient power and authority in all persons above twenty-one years of age belonging to any such church, society or congregation, to elect, at their discretion, certain sober and discreet persons, not less than four, nor more than twenty-five, which persons so elected, upon being registered, as hereinafter directed, shall be constituted a body politic or corporate to act as trustees in the name and behalf of the particular church, society or congregation for which they are respectively chosen, and manage the estate, property, interest and inheritance of the same. (An. Code, 1951, § 248; 1939, § 275; 1924, § 274; 1912, § 339; 1904, § 301; 1888, § 205; 1868, ch. 471, § 156; 1945, ch. 275; 1949, ch. 44.)

§ 257. Powers of trustees in general.

The trustees so elected shall have perpetual succession by their name of incorporation, and shall be capable in law to purchase, take and hold to them and their successors in fee, or for a less estate, any lands, tenements or hereditaments, rents or annuities, goods or chattels within this State, by the gift, bargain, sale or devise of any person, body politic or corporate, capable of making the same, and to use or lease, mortgage or sell and convey the same in such manner as they may judge most conducive to the interest of their respective churches, societies or congregations; provided, that nothing herein shall authorize any sale, mortgage or other disposition of any property held by such corporation under any instrument prohibiting such sale; and provided, the clear yearly income from the estate of any church,

society or congregation, exclusive of the rents of pews, collections in churches, funeral charges and the like, shall not exceed the sum of fifty thousand dollars. (An. Code, 1951, § 249; 1939, § 276; 1924, § 275; 1912, § 340; 1904, § 302; 1888, § 206; 1868, ch. 471, § 157; 1943, ch. 753, § 276.)

§ 258. Place of election of trustees and how succession kept up.

Every such body politic shall be chosen and the succession kept up at such times and places as are ordinarily used for public meetings of the said church, society or congregation, and by such persons as are allowed to have a voice in the management and direction of congregational or temporal concerns, according to the known custom and usage of their respective denominations; or the said body politic or corporate shall be chosen, and the succession kept up, according to the rules, regulations and practice that may have been heretofore adopted and agreed upon, or that shall be, at the first time of electing, agreed upon and adopted by any particular church, society or congregation for directing or managing their congregational or temporal affairs. (An. Code, 1951, § 250; 1939, § 277; 1924, § 276; 1912, § 341; 1904, § 303; 1888, § 207; 1868, ch. 471, § 158.)

§ 259. Minister to be member of body politic.

The minister for the time being, or senior minister, where there are more than one settled in any church, society or congregation, shall always, in virtue of his ministry, be a member of the body politic or corporate belonging to the same, exclusive of the number heretofore prescribed in § 256. (An. Code, 1951, § 251; 1939, § 278; 1924, § 277; 1912, § 342; 1904, § 304; 1888, § 208; 1868, ch. 471, § 160.)

§ 261. Plan specifying time and manner of election of trustees, perpetuation of succession and name of church, society or congregation—In general.

At the first election or appointment of every body politic or corporate aforesaid, every church, society or corporation assembled as already directed, shall determine on their plan,

agreement or regulation, specifying distinctly the time and manner of electing trustees, and the manner in which the succession shall be perpetuated, and containing an exact description of the qualifications of the persons severally electing and elected, and to elect and to be elected thereafter, and also the name, style or title of the corporation by which it shall thereafter be known, and the name of the church, society or congregation choosing the same. (An. Code, 1951, § 253; 1939, § 280; 1924, § 279; 1912, § 344; 1904, § 306; 1888, § 210; 1868, ch. 471, § 162.)

§ 263. Same—Acknowledgment and delivery of copy to Tax Commission.

The plan, agreement or regulation, so acknowledged, together with a copy thereof, shall be delivered for record by the said trustees to the State Tax Commission in the manner and with the effect provided in § 269 of this article. (An. Code, 1951, § 255; 1939, § 282; 1924, § 281; 1912, § 346; 1904, § 308; 1888, § 212; 1868, ch. 371, § 164; 1943, ch. 753, § 282; 1949, ch. 278, § 282.)

§ 264. Same—Amendment.

Every such plan, agreement or regulation, heretofore or hereafter determined upon in the manner provided for in § 261 of this article, may be amended from time to time and in the manner following:

(1) *Trustees to call meeting.*—The trustees or a majority of them shall pass a resolution declaring that such amendment or amendments is or are advisable and calling a meeting of all persons above twenty-one years of age belonging to such church, society or congregation, to take action thereon.

(2) *Notice of meeting.*—Ten days' written or printed notice stating the place, day or hour of such meeting and the business proposed to be transacted thereat shall be given to each such person by leaving the same with him or at his residence or usual place of business or by mailing it, postage prepaid and addressed to him at his address as it appears upon the records of said church, society or congregation.

(3) *Procedure when vote is in favor of amendment.*—If a majority of all such persons attending such meeting vote in favor of such amendment or amendments, articles of amendment setting forth the same and stating that the same has or have been duly advised by the trustees and adopted by such persons, shall be signed and acknowledged in the name and on behalf of the church, society or congregation by such of the trustees as shall be designated in the resolution declaring such amendment or amendments advisable, and the matters and facts set forth in said articles of amendment shall be verified under oath by the chairman or secretary of the meeting of such persons at which such amendment or amendments was or were adopted.

(4) *Delivery of articles of amendment to State Tax Commission.*—Such articles of amendment, together with a copy thereof, shall be delivered for record by the trustees to the State Tax Commission in the manner and with the effect provided in § 269 of this article. (An. Code, 1951, § 256; 1939, § 283; 1924, § 282; 1912, § 347; 1904, § 309; 1888, § 213; 1868, ch. 471, § 165; 1943, ch. 753, § 283; 1949, ch. 278, § 283.)

§ 265. Meetings of members; quorum; record book; power of trustees as to rules and ordinances.

Every such corporation may appoint the times and places of the meeting of its members, and the number necessary to constitute a quorum, and shall provide and keep a good and sufficient record book, and cause therein to be registered all its proceedings, subject at all times to the inspection of the several members of the church, society or congregation; and the same shall be laid before a public meeting when required by any five or more of the members; and the said trustees, or a majority of them, shall have full power to frame such rules and ordinances for conducting their concerns as may be necessary and convenient for accomplishing the end of their institution. (An. Code, 1951, § 257; 1939, § 284; 1924, § 283; 1912, § 348; 1904, § 310; 1888, § 214; 1868, ch. 471, § 166.)

§ 266. Separation and new organization.

When any number of persons belonging to any church or congregation, sufficient to build a church or house of worship, and to maintain a minister, shall choose to separate from the church or congregation of which they have hitherto been a part, and to erect a house of worship, and employ a minister for themselves, it shall be lawful for them to do so; and they shall by their respective name or style be entitled to all the benefits of this article relating to their incorporation; provided only, that all arrearages, debts and engagements contracted, due or becoming due, while members of the former society, shall be discharged. (An. Code, 1951, § 258; 1939, § 285; 1924, § 284; 1912, § 349; 1904, § 311; 1888, § 215; 1868, ch. 471, § 167.)

§ 267. Property held in trust to be conveyed to corporation.

The person or persons holding lands or goods and chattels in trust for any particular church or society shall convey the same to the corporation of such particular church or society, as soon as the same shall be formed under this article. (An. Code, 1951, § 259; 1939, § 286; 1924, § 285; 1912, § 350; 1904, § 312; 1888, § 216; 1868, ch. 471, § 168.)

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 7 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 357

THE MARYLAND AND VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD, *et al.*,
Appellants,

v.

THE CHURCH OF GOD AT SHARPSBURG, INC., *et al.*,
Appellees.

BRIEF, *AMICUS CURIAE,* IN SUPPORT OF JURISDICTION OF THE GENERAL ELDERSHIP OF THE CHURCHES OF GOD IN NORTH AMERICA

LEO PFEFFER
Attorney for Amicus Curiae
15 East 84th Street
New York, New York 10028

TABLE OF CONTENTS

	PAGE
INTEREST OF THE *Amicus*	1
STATEMENT OF THE CASE	2
ARGUMENT	8
CONCLUSION	18

TABLE OF AUTHORITIES

Cases:

Abington School District v. Schempp, 374 U.S. 203 (1963) 18

Attorney General *ex rel.* Mander v. Pearson, 3 Mer. 353, 36 Eng. Rep. 135 (1817) 9

Craigdallie v. Aikman, 2 Bligh 529, 4 Eng. Rep. 435 (1820) 9

Engel v. Vitale, 370 U.S. 421 (1962) 18

Everson v. Board of Education, 330 U.S. 1 (1947) 17

Fowler v. Rhode Island, 345 U.S. 67 (1953) 18

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 7, 13, 14, 15, 16, 18, 19

Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960) 13, 15, 18, 19

McCollum v. Board of Education, 333 U.S. 203 (1948) 18

Michigan Eldership v. Knight, unreported opinion by Michigan Circuit Court of Gratiot County 5, 7

PAGE

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, certiorari granted, 88 S. Ct. 2060 19

United States v. Ballard, 322 U.S. 78 (1944) 9

Watson v. Jones, 80 U.S. (13 Wallace) 679 (1871) ....*passim*
Winebrenner v. Colder, 43 Pa. 244 (1862) 4, 7, 8

Other Authorities:

Dignan, *History of the Legal Incorporation of Catholic Church Property in the United States* (1935) 11

Howe, *The Juridical Status of Churches,* Proceedings of the Institute of Church and State (1958) 10

Judicial Intervention in Church Property Disputes—Some Constitutional Considerations, 74 Yale L.J. 1112 (1965) 18–19

T. Paine, Common Sense 49 (Dolphin Books 1960) 8

Pfeffer, *Church, State, and Freedom* (rev. ed. 1967) 11

IN THE

Supreme Court of the United States

October Term, 1968

No. 357

THE MARYLAND AND VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD, *et al.*,

Appellants,

v.

THE CHURCH OF GOD AT SHARPSBURG, INC., *et al.*,

Appellees.

BRIEF, *AMICUS CURIAE,* IN SUPPORT OF JURISDICTION OF THE GENERAL ELDERSHIP OF THE CHURCHES OF GOD IN NORTH AMERICA

This brief *amicus curiae* is submitted with the consent of counsel for both parties to this appeal.

Interest of the *Amicus*

The General Eldership of the Churches of God in North America is the parent body of the appellant Maryland and Virginia Eldership, which in turn is the parent body of appellees The Church of God at Sharpsburg, Inc. and the Indian Springs Church of God, and as such has a vital in-

terest and concern in the determination of this litigation. The appeal in this case brings to the Court the question of the ecclesiastical and theological integrity of the Churches of God in North America.

Statement of the Case

The Churches of God in North America is a small Protestant denomination founded in Pennsylvania in 1825 under the leadership of John Winebrenner, a German Reformed minister. Today it comprises about 300 individual churches with a total membership of about 30,000, mostly in the middle-Atlantic and midwestern states. Its national headquarters are in Harrisburg, Pennsylvania, where it also operates the Central Publishing House. It also maintains the Winebrenner Seminary and Findlay College, both at Findlay, Ohio, and mission fields in Haiti, India and East Pakistan.

The ecclesiastical structure of the denomination is set forth in the stipulated record in this case, which includes the governing constitutions of the national and state judicatories of the denomination. The structure is hierarchical, with the General Eldership at the apex. The General Eldership, consisting of representatives of the annual or state Elderships, meets triennially and has plenary jurisdiction over the entire denomination, the annual Elderships, the individual churches and all members of the denomination. Between triennial sessions these plenary powers of the General Eldership are delegated by the constitution to the Administrative Council of the General Eldership and its Executive Committee. The constitution (Article

XXII) imposes upon the General Eldership (or its Executive Committee) the duty and responsibility to guard against schisms and provides that in the event of any irregularity in teaching, practice or polity the General Eldership or its Executive Committee shall express its judgment thereon and require the annual Eldership involved to carry the judgment into effect.[1]

Between the General Eldership and the individual churches stand the annual Elderships, of which the corporate appellant herein is one. It is the annual Eldership, composed of representatives of the individual churches, which exercises immediate control and jurisdiction over the individual churches. Local churches are assessed and pay regular amounts for the support of the annual (and General) Elderships, and the ministers who occupy the pulpits of the local churches are appointed (and subject to removal by) the appropriate committee of the annual Eldership.

In the history of the denomination, spanning a period of almost a century and a half, there have been prior to the present controversy only two attempted secessions by local

1. This is substantially the same as the corresponding provision in the constitution of the Presbyterian Church in the United States, to which the Court in *Watson* v. *Jones*, 80 U.S. (13 Wallace) 679 (1871), ruled it was required to give legal effect. The specific language was: "To the General Assembly also belongs the power of deciding in all controversies respecting doctrine and discipline; of reproving, warning, or hearing testimony against error in doctrine or immorality in practice, in any Church, Presbytery, or Synod; * * * of superintending the concerns of the whole church; * * * of suppressing schismatical contentions and disputations; and, in general, of recommending and attempting reformation of manners, and the promotion of charity, truth and holiness through all the churches under its care." *Ibid.* at p. 682.

churches, and in both instances the disputes reached the civil courts. The first, *Winebrenner* v. *Colder*, 43 Pa. 244 (1862), arose over the right to control and occupy the Church of God in Harrisburg. The congregation split between a majority which desired to employ as a pastor James Colder, John Winebrenner's son-in-law, even though he had been expelled from the East Pennsylvania Eldership and was no longer recognized by it as the pastor of the Harrisburg church, and a minority which desired to receive the person duly appointed by the annual Eldership as pastor of the church. In a decision which anticipated *Watson* v. *Jones* by a decade, the Pennsylvania Supreme Court said (at p. 256):

> The trustees, who are the elders, hold the property for the use of the congregation, and that consists of all those who are in full communion with the church, and who adhere or are willing to submit to the regular order of the church: and adherence to the general denomination, while it continues sound and orderly, is one of the essential elements of that order. According to the fundamental, legal, and equitable principles of such associations, that majority which makes use of its corporate forms for the purpose of instituting an organized resistance to the legitimate authority of their ecclesiastical superiors; that expels the members of the minority for refusing to contribute to the support of their disorderly organization; and that institutes as its pastor a regularly expelled minister of their denomination: such a majority is not the true congregation * * *

The second instance occurred in 1961 when the majority of a local congregation at New Haven Center in Michigan

purported to declare its independence of the Michigan Eldership and the General Eldership because the latter had contributed some funds (which presumably included moneys that it had received indirectly from the local congregation via the Michigan Eldership) to the National Council of Churches of Christ in the U.S.A. and had cooperated in some respects with that organization. In an unreported opinion issued by the Michigan Circuit Court of Gratiot County, *Michigan Eldership* v. *Knight*, it was again held that under the constitution and governmental structure of the Churches of God the majority of a local congregation had no legal right to withdraw the church from the denomination, refuse to allow access to the pulpit to a pastor appointed by the annual Eldership or expel from the congregation those members who voted against the resolution of disaffiliation.

The record in the present case does not reveal the causes that impelled the majorities in the Sharpsburg and the Indian Springs churches to assert their independence but it does reveal that in each case prior to the schism the local church had been in full and loyal communion with the Eldership, accepting the pastors appointed by it, contributing to its upkeep and in all other ways submitting to its authority. The record reveals too that in each case the resolution of independence was followed by retaining as pastors persons whose ordination had been revoked by the Maryland Eldership and refusing access to the pulpit to pastors duly appointed by the Eldership. The dispute reached the Executive Committee of the General Eldership

for determination pursuant to Article XII, Section 4[2] and Article XXII, Section 2,[3] of the denomination's constitution.

On July 29, 1966, the Executive Committee rendered its judgment that all persons who voted to withdraw from the Maryland and Virginia Eldership had thereby "abandoned and forfeited all rights, privileges, properties and offices in the local church and in the Churches of God * * *. In each local church the members who continue to adhere and submit to the doctrines and polity of the denomination, constitute the true congregation. The Executive Committee, as the duly constituted Supreme Court of the Churches of God, so determines, reaffirming that the presbyterial polity of the Churches of God recognizes no right of secession on the part of the congregation affiliated with the denomination * * *."

The Maryland courts refused to give legal effect to this judgment of the Executive Committee. The reasoning of the Court of Appeals was that the case was governed by the Maryland General Religious Corporation Law under which both the Sharpsburg and Indian Springs churches

---

2. "The Executive Committee shall be vested with judicial power, and its jurisdiction shall extend to all cases under the Constitution not otherwise provided for * * *"

3. "That the method [of "Guarding Against Schisms"] shall be, upon information of irregularities in teaching, practice, or polity, furnished by an annual Eldership or its Standing Committee, or, in the absence of such official information, upon due information obtained otherwise, for the General Eldership, or the Executive Committee, to express its judgment on matters brought before it, and require the annual Eldership or Elderships, involved to carry said judgment into effect."

were incorporated and that under that law [4] the majorities in the two congregations were the owners of the respective properties and could in that capacity withdraw from the denomination, whereafter the congregations were completely independent of the denomination and in no way subject to the Executive Committee or its judgments. The Court of Appeals said:

> The action taken by Sharpsburg and Indian Springs was by a majority of the respective congregations exercising their rights and powers over the church property in accordance with the General Religious Corporation Law. (Jurisdictional Statement, p. A-26.)

The Court of Appeals distinguished *Winebrenner* v. *Colder* and *Michigan Eldership* v. *Knight* on the ground that those cases did not involve statutory provisions sim-

4. Particularly Section 257, which provides: "In every church, religious society or congregation, of whatever sect, order or denomination, or which shall at any time hereafter be known and acknowledged in the State, and protected by the free and full exercise of its religion by the Constitution and the laws thereof, there shall be sufficient power and authority in all persons above twenty-one years of age belonging to any such church, society or congregation, to elect, at their discretion, certain sober and discreet persons, not less than four, nor more than twenty-five, which persons so elected, upon being registered, as hereinafter directed, shall be constituted a body politic or corporate to act as trustees in the name and behalf of the particular church, society or congregation for which they are respectively chosen, and manage the estate, property and inheritance of the same." The literal language of the section would seem hardly adequate to support the Court of Appeals' conclusion, speaking as it does only of the power to "manage" the property without any indication of a power to withdraw it from the denomination. This Court, however, is bound by the Court of Appeals' interpretation, not merely as to the power of withdrawal but also that a consequence of the statutorily authorized withdrawal of the property is a termination of all relations between the denomination and the withdrawing congregation so that neither its doctrines nor its discipline need or should be given any legal effect by a civil court. It is our contention that the statute so interpreted contravenes directly the holding of *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952).

ilar to those of Section 257 of the Maryland General Religious Corporation Law and that accordingly in those cases the dissident congregations were not exercising statutorily protected rights.[5]

Argument

The pervasive assumption that underlay the disestablishment of churches during the last quarter of the 18th and first quarter of the 19th centuries was that it was better for all if the state would not involve itself in religious affairs.[6] Evidence of America's commitment to this ethic is found in the fact that Jefferson's epitomization of it—"wall of separation between church and state"—quickly became a national maxim. When a schismatic controversy breaks out within a church, intervention by the state often cannot be avoided, if for no other reason than to preserve the peace by preventing resolution of the controversy through physical combat,[7] or to protect the state's sub-

5. The Court of Appeals stated two additional grounds for distinction in respect to *Winebrenner*, but they seem hardly to be significant. In that case, the Court of Appeals said, "there was no question of the property of the local congregation involved." (Jurisdictional Statement, p. A-211.) But denial of access to the pulpit to a pastor appointed by the Eldership would certainly involve the question of control of the property. As for the second ground, that "the local congregation had not voted to leave the parent body" (*ibid.*), that would hardly seem to be relevant in view of the Pennsylvania court's decision that those who defied the authority of the Eldership thereby effectively withdrew from the denomination.

6. "As to religion, I hold it to be the indispensable duty of government to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith." T. Paine, *Common Sense* 49 (Dolphin Books 1960).

7. It was such a disturbance between the competing factions that propelled the Walnut Street Presbyterian Church controversy into the courts. *Watson* v. *Jones, supra,* 80 U.S. at 685.

stantial interest in ascertaining the responsible ownership of property. Nevertheless, disestablishment requires that such intervention in theological affairs be kept to the minimum necessary to protect the state's legitimate interests. See *United States* v. *Ballard,* 322 U.S. 78, 86-88 (1944).

In exercising its unavoidable intervention in church schisms, the court may employ one of several criteria in determining which faction shall receive the protection that the state accords to ownership of property. It may follow the English practice and decide which of the contending factions most closely approximates in its practices and doctrines the orthodoxy of the faith to which both factions declare allegiance. *Attorney General ex rel. Mander* v. *Pearson,* 3 Mer. 353, 36 Eng. Rep. 135 (1817); *Craigdallie* v. *Aikman,* 2 Bligh 529, 4 Eng. Rep. 435 (1820). This approach was rejected in *Watson* v. *Jones,* first, on the practical ground that the civil tribunal does not have the competence to decide theological controversies or at least has less competence than the ecclesiastical tribunals of the particular faith involved, and secondly, and more importantly, that governmental assumption of power to adjudicate between orthodoxy and heresy was inconsistent with the spirit of disestablishment. 80 U. S. at 728-729.

A second approach would be to follow the legal title. Those who have the legal title to a particular church would have the legal right to decide what liturgy shall be practiced within that church, what sermons shall be preached there and which pastors shall be allowed to conduct the liturgy or preach the sermons. This approach too was rejected in *Watson* v. *Jones,* since its adoption would subordinate the

end to the means. Vesting legal title to church property in certain persons as trustees is simply a convenient device for the management of the church's secular affairs so that it will be able to pursue its religious purposes. The equitable principles which severely limit the powers of a fiduciary over property, title to which he holds in trust, are particularly applicable where the purpose of the trust is the preservation and advancement of a religious faith.

A third approach came about as a result of the confrontation of Jeffersonian separationism with Jeffersonian decentralized majoritarianism. On the one hand the state legislatures and courts were willing to insure the independence of churches from state intervention in their affairs. On the other, they deemed the principles of political democracy and the fear of central authority equally relevant to church affairs. Accordingly, the same statutes which granted the right of self-government to churches provided simultaneously that such government would be controlled by the majority in each individual church. Howe, *The Juridical Status of Churches,* Proceedings of the Institute of Church and State, 1958, pp. 10-11.

The Court in *Watson* v. *Jones* was not faced with the necessity of choosing between ecclesiastic self-government and local majoritarianism because the majority of the congregants (though not of the trustees) of the Walnut Street church were loyal to the General Assembly of the Presbyterian Church. That the Court's decision in no way stressed this fact but decided the case on entirely different grounds indicates quite clearly that the Court's decision would not have been different had the majority Walnut Street congregation sided with the pro-slavery trustees.

The effort to impose majoritarian decentralization upon the churches created great difficulties for those faiths governed by a hierarchical polity, and gave rise to considerable intra-church controversy and litigation. The major hierarchical denominations were able to preserve their ecclesiastical polity either by ultimate state judicial acceptance of the rule of *Watson* v. *Jones* or by obtaining enactment of special statutes fashioned to insure central authority over rebellious local majorities.[8]

Maryland followed the latter course. As the Court of Appeals pointed out, the "present General Religious Corporation Law is based upon and largely follows the original legislation on this subject, i.e., the Act of 1802, chapter 111." (Jurisdictional Statement, p. A-6.) The purpose (and effect, as construed and applied by the Court of Appeals in the present case) was to insure control of each church by a majority of the lay congregation. The major hierarchical denominations, however, were able to preserve their ecclesiastical structure by obtaining appropriate legislative enactments from time to time.

Thus, in respect to the Roman Catholic Church, Article 23, Section 271, Annotated Code of Maryland (1966) provides that the religious corporation shall consist of "the ordinary [bishop] and the vicar-general of the archdiocese, the pastor of the said congregation for the time being, according to the discipline and government of the Roman Catholic Church, and such other persons (if any) as may

8. For the history of the struggle within Roman Catholicism, see Dignan, *History of the Legal Incorporation of Catholic Church Property in the United States* (1935). For a summary of the oscillations in one state (Pennsylvania), see Pfeffer, *Church, State, and Freedom*, at 293-295 (rev. ed. 1967).

be appointed by the ordinary to act as additional corporators * * *."

For the Protestant Episcopal Church, Section 283 assures diocesan control by providing that "In his use of the property of the parish or separate congregation as above provided, the rector shall conform to the requirements of the canons of the diocese in which his parish or cure shall be."

For the Methodist Church, Section 313(e) provides that "All real, personal and mixed property owned by any Methodist Church, * * * shall be held in trust by the trustees of such church for the uses of the Methodist Church and shall be subject to the discipline, usage, and ministerial appointments of the Methodist Church as from time to time authorized and declared by the general conference of the Methodist Church."

Presbyterianism is provided for by Section 314 which declares that "Presbyterian Churches may be incorporated only in conformity with the provisions of the Presbyterian Church in the United States of America and its successors, from time to time in effect," and that "the charters of all such Presbyterian Churches heretofore incorporated shall be deemed to be hereby amended to conform to the provisions of the constitution of the Presbyterian Church in the United States of America, and its successors from time to time in effect."

No special statutes were necessary for the Baptist, Congregationalist and Jewish denominations because, as the Court of Appeals characterized it, by "coincidence * * *

the ownership and control of property by the religious corporation formed under the General Religious Corporations Law is, prima facie, consistent with the government and polity of the Baptist and Congregational Churches and of the Jewish Synagogues." (Jurisdictional Statement, p. A-24.)

The effect of all this is that the Churches of God and all other small denominations (of which there must be scores in Maryland)[9] are all cast into a common legislative melting pot and come out in a congregationalist mold. So long as *Watson* v. *Jones* remained a rule of Federal judicial policy, this legislative action by Maryland raised no questions under the First Amendment (although it did raise serious questions under the equal protection clause of the Fourteenth). *Kedroff* and *Kreshik* v. *St. Nicholas Cathedral*, 363 U. S. 190 (1960), however, elevated the rule of *Watson* v. *Jones* to the status of constitutional mandate, based not only on church-state separation but upon religious freedom as well, and this compelled the Court of Appeals to meet the constitutional challenge.

The Court of Appeals sought to do so by asserting that the statute here in issue "was not intended in any way to interfere with or 'establish' the doctrines or disciplines of any religious body. What was intended was to provide for the formation of religious corporations for local congregations which would hold, control and have power to dispose of *the property* of the religious corporations. The Act of 1802 and its successor acts in no way sought to establish any ecclesiastical polity." (Jurisdictional Statement, p. A-23. Emphasis in original.)

9. The 1936 Census of Religious Bodies lists more than 250 separate denominations in the United States.

Whatever may have been the intent of the Maryland legislature in 1802 (and, as we have indicated, the Court of Appeals appears to be in error as to this), the present statute as interpreted and applied by the Court of Appeals in the present case goes far beyond merely regulating secular aspects of the ownership of real property. It does in fact establish a congregationalist polity for all churches (other than the major denominations protected by special statutes), although it does so in two stages. The first stage is to confer control of the real property upon the majority of the local congregation; the second is to attach, as an incident of that control, first, the power of complete secession from the hierarchical denomination of which it is a part, even though (as in the present case) the constitution of the denomination as interpreted by its highest judicatory does not recognize any right of secession, and secondly, such powers consequent on secession as rejecting the pastor duly designated by the higher body, discontinuing payment of required contributions, ousting from the congregation persons loyal to the denominational authorities, and refusing to honor and obey a judgment duly rendered by the denomination's highest judicatory.

This, under *Watson* and *Kedroff*, may not be done. In both cases, the Court specifically refused to allow the locus of legal ownership of the realty to determine the locus of power to appoint pastors or define membership. In both cases, the Court held that beneficial ownership of the realty (as distinct from legal title) is in the same class as the other aspects of ecclesiastical existence and like them must be determined by the denomination's highest judicatory, and not by civil government acting either legislatively (as in

Kedroff and the present case) or judicially (as in *Watson* and *Kreshik*).

The Court of Appeals stated (at p. A-13 of Jurisdictional Statement) that a hierarchical denomination such as the Churches of God may avoid what is in effect a statutory establishment of congregationalist polity in any one of three ways:

1. It may require reverter clauses in the deeds to the property of local churches.
2. It may provide in its constitution or by some other authoritative source for the reverting of the local church property to the hierarchical body upon the withdrawal by a local congregation with an implied consent by the local church to this provision.
3. It may obtain from the General Assembly an act providing for such a result.

There are, we submit, unanswerable constitutional objections to compelling the Churches of God or similar hierarchical denominations from electing any of these alternatives. In respect to the first, it may be noted that the deeds to the properties involved in this suit (other than the parsonage at Indian Springs) do contain reverter clauses to the Maryland and Virginia Eldership, in the case of the church at Sharpsburg if it "ceases to function as a church organization," and in the case of the church at Indian Springs if it should "become extinct or cease to be." The Court of Appeals held that the clauses had not become effective because in neither case did the church "cease to function as a church organization" or "become extinct or cease to be." We agree with this conclusion, but for a fundamen-

tally different reason. According to the constitution and doctrines of the Churches of God (as well as probably most other hierarchical denominations) a local church does not "cease to function" or "cease to be" so long as there are any members faithful to the denomination, its doctrines and discipline, who remain in it. They (represented as a class by the individual appellants herein), though a minority, continue to be "the church at Sharpsburg" or "the church at Indian Springs." So it had been ruled in the two previous attempted secessions from the Churches of God and so too was it ruled in the present case by the highest denominational judicatory.[10]

To compel the Churches of God to require local churches to insert in their deeds a provision that if a majority of the congregation rejects the authority of the denomination the real property shall revert to the Eldership is, we submit, compelling it to change fundamentally its constitution, doctrine and government, and is as much an interference with the denomination's religious liberty as was the attempted legislative and judicial action in *Kedroff* and *Kreshik*.

The same constitutional objection is applicable to the second and third alternatives posed by the Court of Appeals, but additional objections apply to the latter. In the first place, nothing in the record or in such political history of Maryland as this Court may judicially note warrants an assumption that if the denomination had applied to the legislature for a special protective statute, such application

10. The Executive Committee of the General Eldership rendered judgment, stating in part: "In each local church the members who continue to adhere and submit to the doctrines and polity of the denomination constitute the true congregation."

would have been granted.[11] Is it not significant that the present laws of Maryland provide special protection only for the major—one might almost call them "established"—churches, i.e., the Roman Catholic, Methodist, Presbyterian and Episcopalian Churches?

In the second place, the constitutionality of Maryland law must be judged as it now is, not as it may be at some future time. Under present law, it is clear that a directly contrary result would have been reached in these cases if the church at Sharpsburg were Roman Catholic and the one at Indian Springs were Presbyterian. This is so not because these denominations are less hierarchical than the Churches of God—indeed, the Presbyterian is probably less so—but only because they are the beneficiaries of special statutes while the Churches of God is not.[12] This clearly amounts to preferential treatment of these faiths over that of the Churches of God. This constitutes a violation of the Establishment Clause of the First Amendment, for whatever else that clause may forbid it certainly forbids preferential treatment by government of some churches over others. *Everson* v. *Board of Education,* 330 U. S. 1, 15

11. It should be noted that the legislative policy of the State of Maryland is opposed to applications by religious groups for special legislation. Article 23, Section 270, of the Annotated Code of Maryland, provides that "In order to carry out the purpose of §§33 and 48 of Article III of the Constitution of Maryland and in order to prevent the enactment of special laws, amending the charters of religious corporations heretofore incorporated by special act, no bill shall hereafter be introduced at the General Assembly of Maryland for the purpose of amending the charter of any such religious corporation * * *."

12. As summarized by the trial court, "The G.E. [General Eldership] constitution makes it clear that the local churches are subject to the Annual Elderships and the Annual Elderships subject to the G.E. or its Executive Committee in all church matters." (Jurisdictional Statement, p. B-10.)

(1947); *McCollum* v. *Board of Education,* 333 U. S. 203, 210 (1948). It also constitutes a violation of the equal protection clause of the Fourteenth Amendment. *Fowler* v. *Rhode Island,* 345 U. S. 67, 70 (1953) (concurring opinion of Mr. Justice Frankfurter). It would make a mockery of both constitutional guarantees if a religious group discriminated against could be barred from obtaining judicial relief because of the possibility that it may obtain legislative relief if it applies for it to the legislature.

Above all, however, all three suggested alternatives miss the essential constitutional issue in this case. It is not whether the Churches of God can by one means or another escape from the congregationalist polity imposed by the State's General Religious Corporation Law upon small hierarchical denominations; it is whether the State has constitutional power at all to impose such a polity upon them. We submit that under *Watson, Kedroff* and *Kreshik,* it does not, any more than the public school authorities in *McCollum* v. *Board of Education, supra, Engel* v. *Vitale,* 370 U. S. 421 (1962) and *Abington School District* v. *Schempp,* 374 U. S. 203 (1963) could impose religious teachings or prayers even though in each case children of small, minority faiths could obtain exemption from participation by applying to the authorities for it.

Conclusion

In the eighty years between *Watson* and *Kedroff* the rule of *Watson* worked well, so well that most states faced with the question adopted it though they were not constitutionally required to do so. *Judicial Intervention in*

Church Property Disputes—Some Constitutional Considerations, 74 Yale L. J. 1112, 1122 (1965). In the sixteen years since *Kedroff* was decided, the rule has worked well as a constitutional mandate. An effort to weaken it from one direction will be before this Court in the case of *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, October Term 1967, No. 1380, certiorari granted, 88 S. Ct. 2060. The present case presents an effort to weaken if not frustrate it from another direction. The *Watson-Kedroff-Kreshik* rule protects the integrity of churches and freedom of religion. It should be preserved in all its vigor and effectiveness. Accordingly, probable jurisdiction should be noted in this case.

Respectfully submitted,

LEO PFEFFER
Attorney for Amicus Curiae
15 East 84th Street
New York, New York 10028

August, 1968

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

THE MARYLAND & VIRGINIA ELDERSHIP OF THE CHURCHES OF GOD ET AL *v.* THE CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

No. 357. Decided February 24, 1969.

PER CURIAM.

The judgment is vacated and the case is remanded to the Court of Appeals of Maryland for further consideration in light of *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440.